3206

SUPREME COURT OF THE UNITED STATES.

No. 189.

THE MICHIGAN CENTRAL RAILROAD COMPANY, PLAINTIFFS IN ERROR,

vs.

THE MICHIGAN SOUTHERN RAILROAD COMPANY—JOHN B. JARVIS, ELISHA C. LITCHFIELD, THOMAS E. DAVIS, GUY FOOTE, AMOS ROOT, AND MOSES A. McNAUGHTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

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GIDEON, Print.

Writ of Error to the Supreme Court of the State of Michigan.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Supreme Court of the State of Michigan, in and for the first circuit in said State, greeting:

Because, in the record and proceedings, as also in the rendition of a decree which is in said supreme court, between the Michigan Southern Railroad Company, John B. Jarvis, Elisha C. Litchfield, Thomas E. Davis, Guy Foote, Amos Root, Moses A. McNaughton, and the Michigan Central Railroad Company, a manifest error hath happened, to the great damage of the said Michigan Central Railroad Company, as by the complaint of said company appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are therefore hereby commanded, if decree be therein rendered, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, then and there to be held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct *to correct* the error, what of right and according to law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this the ninth day of [SEAL.] September, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States the eighty-first.

ELIJAH HAWLEY, JR.,
Clerk of the Supreme Court of the State of Michigan.

JNO. WINDER, [SEAL.]
Clerk of the Circuit Court of the United States for the seventh circuit and district of Michigan.

Allowed:

ABNER PRATT,
Presiding Judge of the Supreme Court of the State of Michigan.

FRASER,
J. F. JOY,
LATHROP,
For Complaints in Error.

The execution of the within writ appears from the following exemplification of record and the bond and citation hereto attached. Detroit, Nov. 24, 1856.

E. HAWLEY, Jr.,
Clerk of the Supreme Court of the State of Michigan.

Bond to prosecute suit, and pay costs and damages.

Supreme Court of the United States.

THE MICHIGAN CENTRAL RAILROAD COMPANY
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, JOHN B. JERVIS, ELISHA C. LITCHFIELD, THOMAS E. DAVIS, GUY FOOT, AMOS ROOT, MOSES A. McNAUGHTON. } In Error.

Know all men by these presents, that we, James F. Joy, Geo. F. Porter, are held and firmly bound unto the said Michigan Southern Railroad Company, John B. Jervis, Elisha C. Litchfield, Thomas E. Davis, Guy Foot, Amos Root, and Moses A. McNaughton, in the penal sum of one hundred thousand dollars, to be paid to them or their successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs and assigns, firmly by these presents. Sealed with our seals, and dated this the ninth day of September, A. D. 1856.

Whereas the above named Michigan Central Railroad Company hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment or decree in the above entitled cause rendered by the supreme court of the State of Michigan:

Now, therefore, the condition of this obligation is such, that if the above named Michigan Central Railroad Company shall prosecute its writ of error to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise remain in full force and virtue.

JAMES F. JOY, [L. S.]
GEO. F. PORTER, [L. S.]

Citation to the Defendants to appear, &c., &c.

UNITED STATES OF AMERICA, *ss:*

To the Michigan Southern Railroad Company, John B. Jervis, Elisha C. Litchfield, Thomas E. Davis, Guy Foot, Amos Root, and Moses A. McNaughton, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Michigan, for the first circuit, wherein the Michigan Central Railroad Company is plaintiff, and you are defendants in error, to show cause, if any there be,

why the decree or judgment in the said writ of error should not be corrected, and speedy justice should not be done to the parties in that behalf. Witness the honorable Abner Pratt, presiding judge of the supreme court of the State of Michigan, this the ninth day of September, A. D. 1856.

ABNER PRATT,
Presiding Judge of the Supreme Court of the State of Michigan.

Due service of the within citation is hereby admitted, as also due service of the writ of error in same cause.

C. J. WALKER,
Att'y for Appellees.

STATE OF MICHIGAN, *county of Wayne:*

In the Circuit Court for the county of Wayne. In chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, Elisha G. Litchfield, Thomas G. Davis, Amos Root, Guy Foote, and Moses A. McNaughton.

An appeal having been taken in this cause by said defendants from the final decree of said circuit court, passed and entered in this cause on the 17th day of June, A. D. one thousand eight hundred and fifty-four, I, Elijah Hawley, Jr., the register of said court, do hereby (pursuant to the statute in such case made and provided) return to the supreme court of the State of Michigan as follows, viz:

The said cause was commenced by said complainants by filing their bill of complaint, which is in the words and figures following, viz:

To the honorable the Circuit Court of the county of Wayne, State of Michigan, in chancery sitting.

Respectfully shows your orator, the Michigan Central Railroad Company, that your orator was duly constituted a body corporate and politic by the name and style aforesaid, with perpetual succession, by virtue of the provisions of a certain act of the legislature of the State of Michigan, entitled "An act to authorize the sale of the Central Railroad, and to incorporate the Michigan Central Railroad Company," made, adopted, and approved on the 28 day of March, A. D. 1846, in and by which act it was declared that in said corporate name your orator might sue and be sued, might have a common seal, and might have and exercise all powers, rights, privileges, and immunities which were or might be necessary to carry into effect the purposes and object of said act.

And your orator further shows, that within the time limited by the second section of said act, the said State of Michigan sold, granted,

and conveyed to your orator all the right, title, and interest of said State in and to said Central Railroad—all its appurtenances, as more particularly mentioned in said section, for the sum of two millions of dollars, which consideration was fully paid by your orator to said State at the time, in the manner, and in accordance with the provisions of said act; and thereupon all the right, title, and interest of said State of in and to the said Central Railroad, and all its appurtenances, and others, mentioned in said act, became then and thereafter vested in and the property of your orator; and your orator was then and there put in possession thereof.

And your orator further shows, that ever since the incorporation of your orator a board of directors has annually been duly elected, one of whom has uniformly been elected president. in accordance with the provisions of said act; that the first set of directors, named in said act pursuant to the provisions thereof, and within the time limited therein, opened books to receive subscriptions to the capital stock of said company, the whole of which stock was then and there duly subscribed. And you orator further shows, that within the time limited by said act, and in accordance thereto, your orator constructed, completed, and put in operation a railroad from the city of Detroit to Lake Michigan, at a point on the southern boundary line of said State, for the transportation of property and passengers, and the same is now and has been ever since its completion in full operation, which said railroad runs through the village of Jackson, in said State; and your orator further avers, that it has in all things fully complied with all the requirements and provisions of said act. And your orator further shows, that its chief and permanent place of business is in the city of Detroit, in said county of Wayne and State of Michigan; that its chief offices and active establishments are in said city; that said city is the residence of its principal and active officers, and that the said city of Detroit is in fact the head-quarters and chief place of your orator, and where is transacted its principal affairs.

And your orator further shows, that anterior to the sale of said railroad by said State, and its purchase by your orator, the said State of Michigan, in the prosecution of its internal improvement system, had contemplated and in part laid out and constructed three separate and independent railroads, running into the said State parallel to each other, of which that purchased by your orator was one, and another of which was that hereinafter mentioned and purchased by the Michigan Southern Railroad Company; that up to the time of said purchases by your orator and the said Michigan Southern Railroad Company, both of said roads were owned, managed, and controlled by the said State of Michigan.

And your orator further shows, that for some time previous to said sale of said road to your orator, its management was found onerous and unprofitable to the State; that up to the time of said sale it was not completed farther west than the village of Kalamazoo, in said State; that, as then situated, the State was unwilling, and deemed it impolitic,

to incur the outlay of rapidly extending it further west, while, for the want of such extension, the chief value and advantages to be derived were lost; that it was felt to be of the highest importance to the interests of said State that the road should be completed and extended, and it was finally settled upon, as a step dictated by the interest and policy of the State, to sell said road to some private and responsible company, who would bind itself to extend, improve, and complete the same, and thereby open the eastern markets to the western portions of the State, and induce thro' said State the business, travel, and commerce of States still further west.

And your orator further shows, that the chief inducements to, and operating on your orator to purchase said Central Railroad, and enter into the arrangement and contract contained in and contemplated by said act, approved March 28, 1846, were the assurances and provisions contained in said act, designed and intended to guarantee and protect said Central Railroad from the encroachments of rival roads, and from being intersected, tapped, or approached contrary to the provisions of section five of said act; and the certainty in the mind of your orator, that under such protection and guaranty, and by properly managing, extending, and constructing, and finishing said road, it would secure and retain its legitimate local travel and business, and also would become and continue a great thoroughfare and link for travel and commerce between the western and eastern parts of the United States.

And your orator further shows, that it was the palpable interest and policy of said State of Michigan to secure, give, and grant the special assurances, guaranties and provisions, to your orator, contained in said act, not only to enhance the consideration price and value of said road, but thereby also to prevent business, travel and commerce from being diverted from the route of said Central road, and transferred to places in foreign States. And furthermore, that the State of Michigan, in all her legislation in reference to the sale of said Central and Southern Railroads, and in other cotemporaneous and subsequent legislation and action, has adhered to and maintained the same policy; and your orator submits, that it is alike the duty and interest of said State still and ever to adhere to said policy, not only on account of her pledged faith and contract so to do, but also to prevent trade and travel from being transferred and diverted to build up foreign States and towns, which now are kept within the said State of Michigan, and which will continue to tend to the prosperity thereof, if the rights of your orator under the said act of incorporation are not unlawfully interfered with and trampled upon.

That at the time of the purchase of said road by your orator, the said Central Railroad and all its appurtenances, including all the machine shops and other buildings, and stock and materials upon the said road, of whatever name and kind, and all lands or rights of way which the State had or might have acquired in connection with said railroad, and which were transferred and sold to your orator, as mentioned and specified in the second section of the said act, hereinafter referred to, and

approved March 28th, 1846, were not of value to exceed the sum of eight hundred thousand dollars; and that inasmuch as it was necessary for the proper completion of said road, to alter many of the grades and curves, and tear up the iron on the entire of the track, and relay the same with new iron of different character, the real practical value of the mere rights and property mentioned in the said second section *mentioned*, was to give your orator or any person purchasing the said road, of far less value than the sum of eight hundred thousand dollars. That in the building and construction of the said Central road, and acquiring of said rights of way and property, the State paid therefor in a depreciated currency, not worth in the market over, at times, 37 cents on the dollar; and that even in such depreciated currency, the nominal cost of the same to the State was not to exceed two millions of dollars. That while nogotiations were pending for the said purchase between your orator's agents and the agents of said State, the erroneous discrepancy between the value of said road and the price demanded of said State, was matter of earnest discussion, and it was expressly stated, understood, and agreed between the said agents of your orator and the State, that the said purchase price of two millions of dollars, (and the other sums to be paid to the State by your orator under said act and hereinafter mentioned,) were given and demanded, not alone for the said Central Railroad and the property mentioned in said second section, but also and principally for the franchises, privileges and guaranties, remand by and intended to be given to your orator in and by said act, and which would protect the said road from ever being encroached upon by rival or any other railroads, and especially from being connected with, tapped, or approached by any other railroad, in such place or manner as would enable said other road to draw off or divert from any portion of said Central road the business thereof; and thus enable your orator, with profit to itself and benefit to the State, to pay said large sum demanded thereof and complete and extend the said road, under the guaranties and assurances that your orator would reap the benefit and advantages of the travel and commerce thus intended to be opened up by your orator. And that said benefits, so paid for by and developed at the expense of your orator, would not be suffered to be wrongfully and unjustly diverted to the profit and advantage of others. All of which more fully appears by the action and official doings of the agents of your orator, and the agents and committees of said State, appointed to negotiate the said sale, as also by the action and legislation of said State had in the premises, and especially in and by said act incorporating your orator, approved March 28, 1846.

And your orator further shows, that in accordance with the said understandings and agreements herein before mentioned, in reference to the sale and purchase of said Central Railroad, and to prevent the construction of any railroad parallel with, or made to connect with or approximate to your orator's said road, within certain specified distances, unless with and by the assent of your orator, it is declared in and by the fifth section of said act, approved March 28, 1846:

"That no railroad or railroads shall be built, constructed or maintained, or shall be authorized to be built, constructed or maintained, by or under any law of this State, any portion of which shall approach westwardly of Wayne county, within five miles of the line of said railroad, as designated in this act, without the consent of said company, (meaning your orator.)

And your orator further shows, that its said road is laid and constructed upon the line designated therefor in and by said act; and that in and by the other provisions of said act, in addition to the said sum of two millions of dollars, paid by your orator for said road and privileges, as aforesaid, your orator also pays the said State, under the name of a tax, the sum, annually, of over fifty thousand dollars.

And your orator further shows, that at the time the said State determined on a sale of the said Central Railroad, it also determined on selling the Southern Railroad, another of the said three roads hereinafter mentioned, in the event of said Central Railroad being sold; and accordingly, in and by section thirty-eight of an act entitled "An act to authorize the sale of the Southern Railroad, and to incorporate the Michigan Southern Railroad Company," approved May 9, 1846, it is declared, "This act shall take effect and be in force from and after the acceptance of the charter granted to the Michigan Central Railroad Company, and the payment of the sum of five hundred thousand dollars by the company last aforesaid."

And your orator further shows, that in *pursuant* of said act last aforesaid, the said Southern Railroad was sold to and purchased by the said Michigan Southern Railroad Company for the sum of five hundred thousand dollars.

And your orator further shows, that by the sixth section of the act last above referred to, it is provided and declared, "That the said Southern Railroad Company shall also, within three years after the passage of this act, extend, construct and complete the Tecumseh branch, from the village of Tecumseh, by the way of Clinton, to the village of Jackson, by way of Manchester, and along the line of the railroads formerly authorized to be constructed by the Jacksonburgh and Palmyra Railroad Company, or so far along the same as may not conflict with the provisions of an act entitled 'An act to authorize the sale of the Central Railroad, and to incorporate the Michigan Central Railroad Company,' approved March 28, 1846."

And further your orator shows, that at the time of the passage of said act last referred to, the said Jacksonburgh and Palmyra Railroad Company had no legal existence; the charter of said company, and all its franchises, property and appurtenances having, prior thereunto, reverted and passed to said State of Michigan, and belonging, at the time of the passage of said last act, to the said State.

And your orator further shows, that the said Southern Railroad Company having failed to construct said branch north from Tecumseh within the said time specified in their said charter,—to wit, within three years from the date thereof,—it was provided and declared, by

the second section of the act entitled "An act to authorize the Michigan Southern Railroad Company to repair their road with heavy rails, and for other purposes," approved March 31, 1849, "That the time for completing the road to Clinton, in the county of Lenawee, and thence to Jackson, in the county of Jackson, be and the same is hereby extended three years from the time the same is required to be completed in the original act incorporating said company."

And your orator further shows, that the said act received the assent of said company in the manner required to give effect to the same.

And your orator further shows, that the time limited, by said acts herein before mentioned, for the construction of said Tecumseh branch from the village of Tecumseh, by way of Clinton, as specified in said acts, has long since elapsed, and that no part of said branch road by way of Clinton to the village of Jackson was commenced, constructed or completed within the time limited and specified, either by said acts, *either by said acts* above specified, or any other law; and that no part of said branch road north from said Tecumseh has ever yet been constructed or completed.

And your orator further shows, that as it is informed and believes, and so charges the truth to be, that the incorporations and persons mentioned in said section six of the said act incorporating the said Michigan Southern Railroad Company, above referred to, have never caused books to be opened for the purpose of receiving subscriptions to the capital stock for the purpose of extending said Tecumseh branch north from Tecumseh. That no stock has been subscribed or paid in therefor, though the time for so doing, as required by said section six of said act last referred to, has long since elapsed. Wherefore your orator submits, that neither said Michigan Southern Railroad Company, nor any other person or persons, have any power, right or authority to now construct, operate or maintain said road, from said Tecumseh north, as aforesaid; and that, by reason of such failure to comply with the terms of such charter, the power and authority therein given to construct said branch north from Tecumseh has lapsed, and as much of said charter as refers thereto is forfeited.

And your orator further shows, that the purchase-price agreed to be paid by the said Michigan Southern Railroad Company for said Southern Railroad was five hundred thousand dollars. That in reference to the actual value of said Southern Railroad, and the property sold therewith by the State, said price was proportionably a far less sum than that paid by your orators for the said Central Railroad. That while your orators, as aforesaid, paid the entire and full nominal cost of said Central Railroad, the said Southern company purchased said Southern road for less than half its nominal cost to the State. That the reason of this disproportion between the purchase-price and the value of said respective roads was, that the sale of the Southern road was subordinate to the sale of the Central road, and because and in view of the fact known to and recognised by both said Central and Southern companies, and said State, that for the large consideration of

two millions of dollars, and said annual sum, under the name of a tax, to be paid by your orator, there were to be granted and assured to your orator the said privileges, special rights and protections, contained in the said act incorporating it; while there were granted to and accepted by said Michigan Southern Railroad Company, for said comparatively small sum, less extensive privileges and rights, and subject always to said act incorporating your orator.

And further your orator shows, that the said act herein before referred to incorporating the said Michigan Railroad Company, as originally reported to the legislature of said State and printed, contained a section similar to and of like effect to section ten of the act incorporating your orator herein before referred to, and giving to said Southern Company similar rights to those given to your orator in and by said section ten; but that before the passage of said act, incorporating said Southern Company, in pursuance of and in order to carry out the said policy of the State hereinbefore referred to, the said clause or section was stricken from said act, as more fully appears by the actings and doings of said State in reference thereto.

And your orator further shews, that by an act entitled "An act to incorporate the Erie and Kalamazoo Railroad Company," approved April 22, 1833, the said Erie and Kalamazoo Railroad Company were granted power "to construct a railroad, with a single or double track, from Port Lawrence through or as near as practicable to the village of Adrian, and thence on the most eligible route to such point on the Kalamazoo river as they might deem proper and needful."

And your orator further shows, that, previous to the year 1846, the said Erie and Kalamazoo Railroad Company became utterly insolvent; that large sums were due and owing by said company to the laborers and mechanics who constructed their road, and to the persons who supplied material therefor, some of which had been demanded and payment refused, and others of which had been put in suit; that large judgments, to the amount of several thousand dollars, had been received against said company upon which executions had been issued and been returned *nulla bona;* and that said company was, and for more than one whole year continued, notoriously insolvent; that proceedings by quo were commenced in the supreme court of this State for the purpose of having the charter of said company forfeited, as will more fully appear by the files, papers, records, and proceedings in said supreme court in said proceedings, and to which reference is hereby had.

And further your orator shows, that, by an act entitled "An act in regard to the Erie and Kalamazoo Railroad Company," approved May 18, 1846, the original act incorporating said company is amended so as to prevent the said company from extending their said railroad to a point on the Kalamazoo river, or beyond the village of Adrian, in the county of Lenawee; and by which act it is further declared, that upon the compliance by said company with certain conditions therein speci-

fied, "the liberties and franchises conferred by said original act of incorporation, except as herein provided, shall be deemed and held to be validly and legally in existence, and not forfeited or liable to forfeiture for any act or omission prior to the passage of this act."

And your orator further shows, that the said Erie and Kalamazoo Railroad Company complied with the terms prescribed in said last-mentioned act, accepted the same in the manner therein required, paid the tax therein specified, and complied with all the requirements of said act necessary to give full force, effect, and operation to the same; and that thereupon, and in view of the fact that said company had accepted said amendment to their said charter, the said proceedings by quo warranto, to forfeit their charter, were no further proceeded with.

And further your orator shows, and avers the fact to be, that the design, object, and intent of said amendment to the said charter of said Erie and Kalamazoo Railroad Company, restricting it from extending its road beyond the said village of Adrian in the direction of the line of said Central Railroad, was to carry out the settled policy of the State to retain and preserve the benefits of travel and commerce within the State, and also to prevent the ruinous depreciation of the value and profits of said Central Railroad, which would ensue from permitting said Erie and Kalamazoo road to connect with it and divert its travel and commerce from its easterly portion, and from this State to Toledo, in the State of Ohio, which is the principal terminus of the said Erie and Kalamazoo Railroad; and also to enable the said State to confer, guarantee and insure to your orator the said privileges and rights hereinbefore referred to and contained in the charter incorporating your orator, and thereby enhance the price to be obtained by said State from your orator for said Central road, and because the charter of the said Erie and Kalamazoo Railroad was the only charter then in existence which could in any way impede or prevent the granting to your orator the said rights, privileges, and guaranties contained in the said charter of your orator, and for which your orator paid so large a consideration to said State; all of which more fully appears by the official actings and doings of the said State and its agents in reference to the said amendment of said charter of said Erie and Kalamazoo Railroad Company, and the said sale to your orator of said Central Railroad, which was being discussed and contemplated at the time of the passage of said amendment last above referred to.

And your orator further shows, that prior to said year 1846, the said Erie and Kalamazoo Railroad was made to intersect at or near said Adrian with the said Southern Railroad, which was then owned, managed, and controlled by said State; and that so well understood and settled was the policy of said State, against allowing or permitting any connection which would divert the benefits and advantage of trade and commerce from this to other States, that the then commissioners of internal improvements, acting in their public and official capacity, and as agents of and in behalf of this State, caused the track of said Erie and Kalamazoo road to be torn up so as to prevent the said connection,

(which would divert travel and commerce from this State to said Toledo,) and to maintain carry out the said policy of this State.

And your orator further shows, that the said The Michigan Southern Railroad Company have made such arrangements with the said Erie and Kalamazoo Railroad Company that the said Southern Company now regularly and continuously run cars upon, and use that portion of the Erie and Kalamazoo road which lies between the said village of Adrian and Toledo aforesaid, in connection with their said Southern Railroad; and that in fact and effect under said arrangement, and by virtue thereof, the chief amount of the travel and commerce of said Southern Railroad passes over said Erie and Kalamazoo Railroad to said Toledo; which said Toledo is in fact and effect now the principal terminus of the said Southern Railroad.

And your orator further shows, that the said Michigan Southern Railroad Company, a body corporate and politic, capable of suing and being sued, under and by virtue of the said act hereinbefore referred to incorporating said company, and whom your orator prays may be made a party defendant to this, your orator's bill of complaint, having constructed a branch road from said Adrian to the village of Tecumseh, in the same county, connecting with the said Southern road and said Erie and Kalamazoo Railroad at said Adrian, have advertised for the loan of a sum of money for the purpose of constructing a railroad along or near the line of the railroads formerly authorized to be constructed by the Jacksonburgh and Palmyra Railroad Company, and in continuation of their said branch road from Adrian to Tecumseh until it intersect with the said Central Railroad of your orator at Jackson, in the county of Jackson, in said State. And further, that the said the Michigan Southern Railroad Company have already located the intersected track of the said intended railroad, and have issued proposals for contracts for grading the same from Tecumseh aforesaid to Jackson aforesaid, and have also, as your orator is informed and believes, let the entire contract for grading the said track from said Tecumseh to said Jackson to one Thomas G. Davis, (whom your orator prays may be made a party defendant to this your orator's bill of complaint,) and his associates, whose names are unknown to your orator, but whom, when known, your orator prays may be made parties defendant to this bill of complaint. And that the said Davis and his associates threaten to proceed with the grading of said track. And further, that the said The Michigan Southern Railroad Company have already commenced acquiring the right of way for the construction of the said railroad from Tecumseh to Jackson aforesaid, and, as your orator is informed and believes, has in some instances commenced legal proceedings for acquiring the same. And further, that the said The Michigan Southern Railroad Company openly threatens and avows its intention of constructing, completing, running, operating, and maintaining the said railroad from Tecumseh to Jackson aforesaid. And further your orator shows, that the track of the said contemplated and threatened railroad, as located and threatened to be constructed by said Michigan Southern Railroad Company as aforesaid,

runs east from said Jackson to the line of Washtenaw county, and, for a distance of over ten miles, within five miles of the track of your orator's said Central Railroad, and intersects your orator's said road at Jackson aforesaid.

And your orator further shows, that if the said contemplated railroad from Tecumseh to Jackson is permitted to be built and constructed, it, together with said branch from Adrian to Tecumseh and said portion of the Erie and Kalamazoo Railroad between Adrian and Toledo, will be and constitute in fact and effect one railroad from Toledo, in the State of Ohio, to said Jackson, in this State, and running from the southerly boundary of this State to within five miles of the line of your orator's said Central road; and at said Jackson tapping and intersecting with your orator's said road so as to draw off the travel and commerce therefrom, assured to your orator by the State as aforesaid, and to divert the same to Toledo, in the State of Ohio, which will be in fact, spirit and effect, a direct and positive violation of the rights and privileges guarantied to your orator by the State as aforesaid, and also of the said policy of said State.

And further your orator shows, that if the said contemplated railroad is permitted to be constructed, it will be in fact and effect a continuation and extension of the said Erie and Kalamazoo road beyond the village of Adrian towards the Kalamazoo river, and in violation of the said act amending the act incorporating said Erie and Kalamazoo Railroad Company hereinbefore referred to.

And further your orator shows, that the principal value and profit to be derived by your orator from the said rights and privileges guarantied to it by its said charter, were the securing to your orator the local business, travel and commerce along the vicinity of its line, and also securing for it the transit over the eastern portion of its line, the travel and commerce carried by it over the western portion, without suffering the line to be tapped and the same diverted by the approximation or intersection of other rival railroads. That if said contemplated railroad from Tecumseh to Jackson is permitted, it will tap and intersect with your orator's said road and draw off therefrom much of the local business now done by your orator, and will also draw off from your orator's road a large amount of the travel and commerce brought by your orator from the west, and which now does and otherwise would pass over your orator's road to the terminus thereof at the city of Detroit, and render almost profitless the said eastern portion of your orator's road; that the construction and maintenance of said road would, to an incalculable extent, impair and diminish the value of said privileges and assurances granted to your orator, and would also deteriorate the value of its said charter and stock, and work irreparable injury to your orator; that said threats of said Southern Company to construct said contemplated railroad, and the steps taken and progress made towards the construction of the same, have already and to a great extent affected and diminished the value of your orator's said road and the stock thereof. That the expectation created by the construction of the same impedes extensive

business arrangements which your orator otherwise could and would make; that not only would the construction and operation of said road injuriously affect your orator's rights, but that the mere threats to construct the same, the steps taken and being taken therefor, and the belief thereby engendered in the mind of the business portion of the community that said contemplated road can and will be constructed, is daily working great and irreparable injury to your orator, in impeding legitimate business operations, and in deteriorating the market value of its stock as aforesaid. And further, that the permitting the construction and completion of the same will be in direct violation of the rights, contracts and guarantees of said State to your orator, in and by your orator's said act of incorporation and purchase from the State.

And your orator further shows, that, as it is informed and believes, the said The Michigan Southern Railroad Company at times gives out and asserts that it will construct the said railroad from Tecumseh to Jackson as aforesaid, under the provisions of its said act of incorporation hereinbefore referred to; that the said Michigan Southern Railroad Company at other times gives out and asserts that it furnishes and will furnish the requisite moneys to third persons to purchase and procure the right of way or fee of land for the track and usages of the said threatened railroad, in the name of third persons or private individuals, who will hold and permit the same to be used for the track and use of said contemplated railroad; that at other times said Michigan Southern Railroad Company gives out and asserts that it and others, whose names are unknown to your orator, will locate, construct, and maintain said threatened railroad to some point across and beyond the track of your orator's said railroad at or near said Jackson.

And your orator further shows, that John B. Jarvis, the president and one of the directors of the said Michigan Southern Railroad Company, and Elisha C. Litchfield, also a director of the said last company, and Guy Foote, Amos Root, and Moses A. McNaughton, (whom your orator prays may be made parties defendant to this your orator's bill of complaint,) and others whose names are at present unknown to your orator, but whom, when discovered, your orator prays may be made parties defendant herein, have combined, conspired, and engaged in procuring the said rights of way for said Michigan Southern Railroad Company, to construct and maintain said contemplated railroad along said located and threatened route; that your orator is unable to state the various devices which will be and are resorted to by said Michigan Southern Railroad Company, and said individuals combining and confederating with it as aforesaid, to make, construct, and complete said threatened railroad from said Tecumseh to said village of Jackson; but your orator charges and avers that, whatever pretences, devices, and schemes are or may be resorted to by said Michigan Southern Railroad Company, and the said persons combining and confederating with it as aforesaid, the part design of the said Michigan Southern Railroad Company, and said persons, is to construct said contemplated railroad along the said route aforesaid, and thus intersect

and tap your orator's said road at said Jackson as aforesaid; and that all and every their acts, designs, threatenings, doings, and actings in the premises, and in direct and positive violation, *and* a mere evasion of the rights, privileges, and franchises of your orator, so as aforesaid guarantied and deemed to your orator by the said State of Michigan.

And further your orator shows, that your orator has never given its consent to the construction of the said contemplated railroad from Tecumseh to Jackson, or any part thereof, but that, on the contrary, when your orator was informed of the said design and threat to construct the same, it at once caused notice to be served on the said John B. Jarvis, president of the said Michigan Southern Railroad Company, that the same would be an infringement of the rights of your orator, and would not be allowed; that to do so was beyond the powers granted to Southern Company, and that any attempt to construct or maintain any railroad within five miles of your orator's said road would be resisted, and the rights solemnly guarantied to your orator by the State, and for which a large consideration was paid, would be vindicated.

And your orator further shows, that it well hoped that upon receiving the said notice said Southern Company, and said persons combining and confederating with it as aforesaid, would desist, and cause it and their agents to desist from and abandon the construction of said railroad, but your orator shows that instead of so complying with the just and reasonable expectation of your orator in that behalf, the said Michigan Southern Railroad Company, and the said other parties defendants herein before named, and their said agents and associates, disregarding the rights of your orator in the premises, still continue their illegal and unjust proceedings for the construction of the said contemplated railroad from Tecumseh to Jackson as aforesaid, and still threaten and avow their intention and determination to construct, complete, maintain, use, run, and operate the same. And further, unless restrained by this honorable court, the said Michigan Southern Railroad Company, and said other above named defendants herein, and their agents and associates, will in fact construct, maintain, complete, and operate the said road to the great and irreparable injury of your orator as aforesaid; and that in fact the said company and persons are now actively engaged in measures and proceedings for the construction of the same.

All of which actings and doings are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises; in tender consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable; to the end, therefore, that the said Michigan Southern Railroad Company, John B. Jarvis, Elisha C. Litchfield, Thomas G. Davis, Guy Foote, Amos Root, and Moses A. McNaughton, defendants in this bill named, and their confederates, when discovered, may, without oath, (their answer under oath being hereby expressly waived,)

to the best and utmost of their several and respective knowledge, information, and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto; and that the said defendants and every of them may *be* the decree of this honorable court be particularly enjoined, inhibited, and restrained from making, constructing, or putting into operation, or obtaining the right of way therefor, the said contemplated railroad from said Tecumseh to said Jackson, or as much thereof as approaches westwardly of Wayne county, within five miles of the line of your orator's said railroad, or any other railroad which the said defendants, or any or either of them, may claim to build by virtue of the provision in said charter incorporating said Southern Company, or by any other authority whatever, and which would, or any part which would approach westwardly of Wayne county, within five miles of the said line of your orator's said road; and that your orator may have such further or other relief in the premises as the nature and circumstances of their case may require and to your honor shall seem meet:

May it please your honor to grant unto your orator a writ of injunction, issuing out of and under the seal of this court, to be directed to the said Michigan Southern Railroad Company, John B. Jarvis, Elisha C. Litchfield, Thomas C. Davis, Guy Foote, Amos Root, and Moses A. McNaughton, the defendants hereinbefore named, to restrain them, and each and every of them, their servants unknown, and agents, from making, constructing, or putting into operation the said contemplated railroad from Tecumseh to Jackson, or so much thereof as approaches westwardly of Wayne county, within five miles of the line of your orator's said road, or any other railroad which the said defendants, or any or either of them, may claim to build by virtue of the provisions in the said charter incorporating said Southern Company, or by any other authority whatever, and which would, or any part of which would approach westwardly of Wayne county, within five miles of the said line of your orator's railroad, until the further order of this court; and also the writ of subpœna commanding them and each of them at a certain day and under a certain penalty therein to be mentioned, personally to be and appear in this court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform and abide such further order, direction, and decree therein as to your honor shall seem meet.

And your orator shall ever pray, &c.

J. W. BROOKS.

JAMES A. VAN DYKE,
A. D. FRASER, and
H. EMMONS, and
WILLIAM GRAY,
Solicitors, and of Counsel for Complainant.

STATE OF MICHIGAN, *Wayne county, ss:*

John W. Brooks maketh oath and sayeth: That he is now, and for some years past has been the superintendent of the "Michigan Central Railroad Company," the corporation in the foregoing bill mentioned, and the complainant therein; that by means of his office he has acquired and possesses, as he verily believes, greater and more particular knowledge of, and relating to the matters of said bill, and the facts therein stated, than the president or any or either of the members of such corporation; that he has read the said bill; that the same is true of his own knowledge, except as to matters which are therein stated to be on the information and belief of the complainant, and that as to those matters he has been so informed and believes it to be true.

J. W. BROOKS.

Sworn to and subscribed before me this sixteenth day of August, A. D. eighteen hundred and fifty-three.

J. LOGAN CHIPMAN,
Notary Public, Wayne county, Mich.

Let a preliminary injunction issue in this cause in pursuance of the prayer of the complainants in the foregoing bill of complaint, until the final hearing of this cause, or until the further order of the said court.

SAMUEL T. DOUGLASS,
Circuit Judge.

File, August 19th, 1853.

Afterwards, to wit, on the nineteenth day of August, one thousand eight hundred and fifty-three, the following order was made and entered in the journal or record of said court, viz:

STATE OF MICHIGAN.

The Circuit Court for the county of Wayne—In Chancery.

Before the Hon. Samuel T. Douglass, circuit judge in chancery, sitting at

THE MICHIGAN CENTRAL RAILROAD COMPANY, complainants,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY—John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Guy Foote, Amos Root, and Moses A. McNaughton, defendants.

On reading and filing the bill of complaint in this cause, on motion of James A. Vandyke, A. D. Fraser, H. H. Emmons, and William Gray, solicitors for complainant, it is ordered that the defendants show cause at the court-house, in the city of Detroit, on the fifth day of September, A. D. 1853, at 10 o'clock a. m., or as soon thereafter as coun-

sel can be heard, why an injunction should not issue against them as prayed for by the said bill of complaint; and further, that the complainant cause written notice of this order to be served on Messrs. Baker & Millard, attorneys for the Michigan Southern Railroad Company at Adrian, and personally upon as many of the other defendants as are found within this State, at least ten days before the said day fixed for the said hearing.

Detroit, August 19, 1853.

SAMUEL T. DOUGLASS,
Circuit Judge, Third Circuit.

Entered by

E. HAWLEY, Jr., *Register.*

Afterwards, to wit, on the first day of November, one thousand eight hundred and fifty-three, the following order was passed and entered in said court in said cause, viz:

At a session of the circuit court for the county of Wayne, in chancery, held at the court-house in the city of Detroit, on the first day of November, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the honorable Samuel T. Douglass, circuit judge.

THE MICHIGAN CENTRAL RAILROAD COMPANY,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY.

A motion having been heretofore made in this cause, that an injunction be issued against the defendants in this cause restraining and enjoining them, and each and every of them, their servants unknown, and agents, from making, constructing and putting into operation a contemplated railroad from Tecumseh to Jackson, or so much thereof approaches westward of Wayne county within five miles of the line of complainants' road, or any other railroad which the said defendants or any or either of them may claim to build by virtue of the provisions of the charter incorporating the said Southern Company, or by any other authority whatever, and which would, or any part of which would, approach westward of Wayne county, within five miles of the said line of complainants' railroad, until the further order of this court; and said motion having been argued at Chambers, and the court having considered the same:

Now, therefore, it is ordered that an injunction do issue out of and under the seal of this court, directed to the defendants, the Michigan Southern Railroad Company, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Guy Foote, Amos Root, and Moses A. McNaughton, and their agents, solicitors, workmen, laborers, contractors, sub-con-

tractors, confederates, and servants, commanding and enjoining them absolutely to desist and refrain from making, constructing, or putting in operation, and from any and every proceeding, by obtaining rights of way or otherwise, toward the making, constructing, or putting in operation within five miles of the main line of the Michigan Central Railroad, west of Wayne county, of that certain railroad known as the Tecumseh branch of the Michigan Southern Railroad, or of any other Railroad which, when constructed, would form the whole or any part of a continuous line of railroads from the eastern or from the southern boundary of this State, until the final hearing in this cause, or until the further order of this court.

Entered by

ELIJAH HAWLEY, Jr., *Register.*

Afterwards, to wit, on the twenty-third day of November, one thousand eight hundred and fifty-three, in pursuance of the above and foregoing order of said court, a writ of injunction was issued out of and under the seal of said court, which writ of injunction is in the words and figures following, to wit:

STATE OF MICHIGAN,
Wayne county, ss:

The people of the State of Michigan, to the Michigan Southern Railroad Company—John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Guy Foote, Amos Root, and Moses A. McNaughton, and their and each of their agents, solicitors, workmen, laborers, contractors, sub-contractors, confederates, and servants, and each and every of them, greeting:

Whereas, the Michigan Central Railroad Company, a body corporate and politic in said State, complainant, has lately exhibited its bill of complaint in the circuit court for the county of Wayne, in chancery, before the honorable Samuel T. Douglass, judge of said court, against you, the said Michigan Southern Railroad Company, John B. Jarvis, Elisha C. Litchfield, Thomas G. Davis, Guy Foote, Amos Root, and Moses A. McNaughton, defendants, to be relieved touching the matters in said bill of complaint complained of, in the which bill it is complained of amongst other things that you and each of you have injured and have threatened to proceed to injure, and are proceeding to injure, said complainant touching the matters and things in said bill of complaint contained and set forth, and that your threats, actings, and doings, are contrary to equity and good conscience; and, whereas, on the reading and filing of said bill of complaint in said court, before said judge, he, the said judge, did order and direct that said defendants should appear and show cause at the time and place in said order designated why an injunction should not issue against them as prayed for by said bill; and, whereas, said defendants did appear to show cause pursuant to said order; and, whereas, in the reading and filing said bill, and the answer and affidavits filed by said defendants, and on the hear-

ing of counsel for the respective parties, complainants and defendants, and on due deliberation in the premises, the said judge did order and direct that a preliminary injunction should be issued, pursuant to the prayer of said bill, on motion of Messrs. Van Dyke, Fraser, Emmons, and Gray, solicitors, and of counsel for said complainant.

Now, therefore, in consideration of the premises, and of the particular matters in said bill set forth, you, the said Michigan Southern Railroad Company, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Guy Foote, Amos Root, and Moses A. McNaughton, and the other persons before-mentioned, each and every of you are commanded absolutely to desist and refrain from making, constructing, or putting in operation, and from any and every proceeding, by obtaining rights of way or otherwise, towards the making, constructing, or putting in operation, within five miles of the main line of the Michigan Central Railroad, west of Wayne county—of that certain railroad known as the Tecumseh branch of the Michigan Southern Railroad, or of any other railroad, which, when constructed, would form the whole or any part of a continuous line of railroad from the eastern or from the southern boundary of this State, until the final hearing in this cause, or until the further order of this court.

Witness the honorable Samuel T. Douglass, judge of said court, and the seal of said court, at Detroit, in said Wayne county, this twenty-third day of November, A. D. 1853.

ELIJAH HAWLEY, JR.,
Register.

The following proof of service *of service* of the foregoing writ of injunction was endorsed, or attached thereto, and filed in this office:

STATE OF MICHIGAN, *County of Jackson, ss:*

James C. Wood, being duly sworn, says, that on the 30th day of November, A. D. 1853, he served the foregoing writ of injunction upon the above named Guy Foote, Amos Root, and Moses A. McNaughton, by exhibiting to each of them the aforesaid writ, and showing each of them the within seal of said court, and the register's name thereto attached; and, at the same time, by delivering to each of them a true copy of said writ of injunction.

(Signed) JAS. C. WOOD.

Subscribed and sworn to before me, the 30th day of November, A. D. 1853. J. HAIRE,
Justice of the Peace of Jackson county, Michigan.

STATE OF MICHIGAN, *County of Monroe:*

Ira K. Grosvenor, of said county, being duly sworn, says that on the 3d day of December, A. D. 1853, he served the foregoing writ of injunction upon J. K. Moore, the superintendent of the Michigan Southern Railroad Company within named, by exhibiting to him the above writ of injunction, and showing to him the within seal of said

circuit court, and the register's name thereto attached; and, at the same time, delivering to him a true copy of said writ of injunction.

(Signed) IRA K. GROSVENOR.

Subscribed and sworn to before me, this 5th day of Dec., A. D. 1853. TALCOTT E. WING,
Notary Public, Monroe co., Mich.

And afterwards, to wit, on the twenty-third day of November, in the year one thousand eight hundred and fifty-three, the said defendants, the Michigan Southern Railroad Company, filed in the office of the register of said court their several answers to the complainants' bill of complaint, which answer is in the words and figures following, to wit:

STATE OF MICHIGAN,
Circuit court for the county of Wayne, in chancery.

The several answers of the Michigan Southern Railroad Company, one of the defendants to the bill of complaint of the Michigan Central Railroad Company, complainant, against this defendant, John B. Jervis, Elisha C. Littlefield, Thomas G. Davis, Guy Foote, Amos Root, and Moses A. McNaughton, defendants.

This defendant, now and at all times hereafter, saving and reserving to itself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contain , for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for it to make answer unto, it answers and says:

That it admits that the said complainant was constituted a body corporate and politic by the name and style of the Michigan Central Railroad Company, with perpetual succession, in virtue of the provisions of a certain act of the legislature of the State of Michigan, entitled An act to authorize the sale of the Central Railroad, and to incorporate the Michigan Central Railroad Company, approved on the 28th day of March, A. D. 1846, wherein it was declared, that in said corporate name the said complainant might sue and be sued, might have a common seal, and might have and exercise all powers, rights, privileges, and immunities, which were or might be necessary to carry into effect the purposes and objects of the said act, as the same were therein set forth.

And this defendant further answering says, that it admits that, within the time limited by the second section of said act, the said complainant accepted the same and the charter guarantied to it thereby, and did pay at the State treasury to the said State of Michigan the sum of five hundred thousand dollars; but, whether the said State of Michigan sold, granted and conveyed all the right, title and interest of said State in and to said Central Railroad, and all its appurtenances, as particularly mentioned in said second section, for the sum of two millions of dollars, and whether the said two millions of dollars was fully paid by

said complainant to said State at the time, in the manner, and in accordance with the provisions of said act, this defendant does not know, and cannot state, and, therefore, leaves the said complainant to make such proof thereof as it may be advised.

And this defendant further answering says, that it admits that the said complainant was put in possession of some portion of said Central Railroad, but how much thereof, and whether upon the conveyance and payment alleged in said complainant's bill all or any of the right, title or interest of the said State of Michigan, of, in, or to the said Central Railroad or its appurtenances or others mentioned in said act, became then or thereafter vested in or became the property of the said complainant, this defendant does not know, and cannot state, and, therefore, leaves the said complainant to make such proof thereof as it may be able to do.

And this defendant further answering says, that whether ever since the incorporation of the said complainant a board of directors has annually been duly elected, or whether one of said board has uniformly been elected president, in accordance with the provisions of said act, this defendant does not know, and cannot state, and, therefore, leaves the said complainant to make such proof thereof as he may be advised.

And this defendant further answering says, that whether the first set of directors in said act opened books to receive subscriptions to the capital stock of said Michigan Central Railroad Company, in pursuance of the provisions of said act, or in any other manner, this defendant does not know, and cannot state; but this defendant denies that the whole amount of said capital stock was then or has been at any other time subscribed by any person or persons legally authorized to subscribe the same; and this defendant says that it has been informed, and verily believes, and so states the truth to be, that a large amount of the capital stock of said company has been issued without any authority of law whatever.

And this defendant further answering admits, that the said complainant comstructed, completed, and put in operation a railroad from the city of Detroit to Lake Michigan, and at a point on the southern boundary line of said State, for the transportation of property and passengers, and that the same is now, and has ever since its completion, been in operation; and that said railroad runs through the village of Jackson, in said State; but whether the said railroad was so constructed, completed, and put in operation within the time limited by said act, and whether the said complainant has in all things or in any manner complied with all or any of the provisions and requirements of said act, this defendant does not know, and cannot state, and, therefore, leaves the said complainant to make such proof thereof as he may be able to do.

And this defendant further answering says, that, whether the chief or permanent place of business of the said complainant is in the city of Detroit, in said county of Wayne; or whether the chief officers or active establishments of the said complainant are in said city; or whe-

ther it is the residence of the principal or active officers of said complainant, or is the chief place, or where is transacted the principal of its affairs, this defendant is uninformed, save by the said complainant's bill of complaint, and, therefore, cannot state.

And this defendant further answering admits, that anterior to the time when the said Central Railroad was sold by said State, and purchased by said complainant, as alleged by it in its said bill, the said State of Michigan had, in prosecution of its internal improvement system, contemplated and in part laid out and constructed three separate and independent railroads running through the said State parallel or nearly so to each other, of which that alleged to be purchased by said complainant was one, and that purchased by this defendant was another; and that, up to the time of the purchase of one by this defendant, and the alleged purchase of the other by the said complainant, both of said roads were owned, managed and controlled by the said State of Michigan; but this defendant submits that the same is wholly irrelevant, and cannot in any manner affect the questions attempted to be brought in litigation by the said complainants in the filing his said bill of complaint.

And this defendant further answering denies, that for some time previous to the alleged sale of the said Central Railroad to the said complainant, its management was found onerous or unprofitable to the State, but, on the contrary, this defendant insists that the management of the said Central Railroad was quite profitable to the State, so much so as to pay, as this defendant is informed and believes, a larger per centum on the then cost of the same than it has at any time since that period earned or paid upon the capital invested therein, notwithstanding the said Central Railroad was only completed at the time as far west as Kalamazoo, in said State.

And this defendant further answering says, that it submits that it is entirely irrelevant for the said complainant to enter into a statement of what has been or is the policy of the State, or what might have actuated it in making the alleged sale of the said Central Railroad to the said complainant, except so far as the same may appear from its said charter.

But this defendant nevertheless further answering upon this subject, irrelevantly introduced in the said complainant's bill of complaint, says, that by a failure of the said State of Michigan to pay the principal or interest of its debt, some portion of which, before the said alleged sale of the said Central Railroad, had become due and owing from the said State to its various creditors, the credit and pecuniary responsibility of the said State in the estimation of capitalists and business men had greatly suffered, so much so that some of the officers of said State, in the purchase of iron engines and spike to enable them to carry on and construct the different railroads at that time carried on by said State, were obliged to become personally responsible, in addition to the responsibility of the State, for the payment of the money agreed to be paid by said State therefor before the same could be procured.

That by reason of such depreciated credit the State could not carry on the said system of internal improvements so successfully or economically as could be done by a private responsible company, nor obtain the means to relay the track of such of its said roads as were becoming impaired by use or decay; and, although it was proposed on the part of no inconsiderable minority of the citizens of the State at that time that the works of internal improvement then belonging to the State should be leased to such responsible persons or corporations which might be disposed to take the same for such a term of years as would enable the said persons or corporations to fully refit, repair, and complete the said works of internal improvement, so as to enable them to do a successful business; and although, as this defendant is informed and believes to be true, there were proposals of such a nature offered to the said State at about the time of the passage of the said act of the legislature hereinbefore referred to by responsible and efficient business men, there were other and still more convincing reasons which influenced the passage of the said act of the said legislature, hereinbefore referred to; foremost among these reasons was the settled conviction, on the part of a large majority of the citizens of the State, that it was not only not the duty of a State to become engaged in carrying on works of internal improvements, but that by such a course of policy, profligacy, and corruption in official stations would be greatly encouraged, and that the control of the said works of internal improvement would, without doubt, become an element in the strife for mastery between the two great political parties in the State, and thus work irreparable injury to its good government.

This defendant further says, that a large portion also of the citizens of said State, at the time of the passage of the said act of the said legislature, were strongly in favor of any course of policy which might or would tend to discharge the then large debt hanging over said State, the interest of which had not only long remained unpaid, but the principal also then was fast maturing, and, although it was supposed that by giving up for a time by a lease the works of internal improvement to individuals, or an incorporated company, and a resort to still greater taxation, the interest, and perhaps eventually the principal of the said debt of the State might have been paid and discharged, yet this anxiety on the part of its citizens, coupled with the reasons heretofore enumerated, mainly induced the passage by its representatives of the act of the legislature hereinbefore referred to.

And this defendant further says, that it denies that it was finally settled upon as a step dictated by the true policy or interest of the State, to sell the said Central Railroad to some private and responsible company, simply to obtain from it an agreement to extend, improve, and complete the same. But this defendant insists, that had the said agents of the said complainant, at the time of the passage of the said act of the said legislature, avowed their determination to extend and construct the said Central Railroad upon the line as now established

for the same, then the said act of the said legislature would never have become a law, as this defendant verily believes.

And this defendant further says, that the settled policy and design of the State of Michigan had been to extend and construct the said Central Railroad from Kalamazoo westwardly through the village of Paw Paw, and thence onward to the village of St. Joseph, on Lake Michigan, and that assurances at the time of the passage of the said act of the legislature were held out by the said agents of the said complainant that the said complainant would continue in the same course of policy, and thus the passage of the said act was procured.

And this defendant further answering denies, that the assurances and provisions contained in section five of said act were the chief inducements to the said complainant for the alleged purchase of the said Central Railroad; and now, if such were the case, this defendant submits that the said complainant could not acquire by purchase from the State of any such rights or privileges as is now set up and claimed to have been granted it by said section five. The said legislature who passed said act having no power to grant any assurances, rights, or privileges whatever, to any person or corporation, contrary to the policy established by the said State by its fundamental law, which the said complainant and its said agents then well knew, and which this defendant submits would be the effect of the construction claimed for said section five by said complainant.

And this defendant further answering denies, that it was either the interest or policy of said State of Michigan to give or grant to said complainant any assurances, guarantees, or provisions, to enable the said complainant to monopolize the carrying trade of any portion thereof; nor would it have been either the interest or policy of said State to have adopted any law or course of policy by which the business travel or commerce thereof should in any manner be impeded in, or diverted from, its natural channels, whether the same should be in or out of the State, otherwise the said legislature could never have enacted the amendments to the charter of the said complainant, approved April 3, 1848. Whenever it was permitted, the said complainant, in fact and effect, (and as it now does,) to make the city of Chicago, in the State of Illinois, the western terminus of its said road, instead of New Buffalo, in said State of Michigan, whereas had said amendments not been passed, the said complainant would have, by its termination at New Buffalo, built up a town in said State, to wit, at said New Buffalo, instead of aiding to build up the said city of Chicago. This defendant therefore submits, that it has not been at any time, nor is now, the policy or interest of the said State of Michigan to adopt the course which the said complainant alleges it has pursued; and this defendant also denies equally the fact alleged in said bill, that said State has for any period, even the most brief, adopted or pursued any such course of policy as is alleged by said complainant in its said bill; nor will the said State, in the opinion of this defendant, at any time

hereafter adopt a course of policy at once so suicidal and subversive of the best interests of a large majority of its citizens.

And this defendant further answering says, that although the said complainant may have paid nominally to said State of Michigan the sum of two millions of dollars, as alleged by it in its said bill, yet that nearly the whole of the same was paid in the depreciated currency and evidences of indebtedness of the State, and which did not cost the said complainant more than seventy cents on the dollar; and that therefore the actual purchase-price to said complainant of the said railroad, as alleged to have been sold by the State, could not have exceeded one million five hundred thousand dollars; and this defendant submits to the judgment of this court, that even if said complainant had paid to the State for said railroad and charter, in fact as well as in name, said sum of two millions of dollars, that it would be more appropriate for the said complainant to apply to the legislature for relief, than to come into this court to detail its grievances.

And this defendant further answering admits, that said section five of said first mentioned act does contain the provision, as quoted in said complainant's bill; but this defendant also says, that said section five contains other provisions concerning the same subject-matter, and that all of said provisions, when taken together, mean nothing more, in the opinion and belief of this defendant, than a provision to prevent the construction or maintenance of railroads running across the State, or nearly so, and terminating at the eastern or southern boundary thereof, and running also parallel, or nearly so, with the said road of said complainant within the distance in said section prohibited. And this defendant further answering admits, that the said complainant does pay to the said State of Michigan an annual tax, which is in common with this defendant and with the large mass of citizens and corporations in said State; but the amount of said tax this defendant does not know and cannot state, and therefore leaves the said complainant to make proof thereof, if it may be so advised.

And this defendant further answering says, that for the reasons heretofore alleged by this defendant, in this, its said answer, the said State of Michigan, at the time of the passage of the said act of the legislature hereinbefore first mentioned, determined also to sell the southern railroad; and, that in pursuance of such determination, the legislature of said State passed an act, which was approved May 9, 1846, and which was entitled "An act to authorize the sale of the Southern Railroad, and to incorporate the Michigan Southern Railroad Company, section thirty-eight of which said last-mentioned act did contain the provision as alleged in said complainant's bill; and section six thereof did also contain the provision as alleged in said bill; and further, that in pursuance thereof the said Southern Railroad was sold to, and purchased by, this defendant for the said sum of five hundred thousand dollars, and that this defendant has entered into possession of the said road last mentioned, and its privileges and appurtenances, as in said last-mentioned act described.

This defendant further answering denies, that at the time of the passage of the said act last referred to, the Jacksonburgh and Palmyro Railroad Company had no legal existence; but this defendant insists, that only so much of the railroad of said company as had been mortgaged to the State of Michigan had passed to said State at that time, and that the franchises and privileges of said last-named corporation, in respect to that portion of its line not then completed and not mortgaged to the said State, were then, and now are, perfect, no judicial proceedings having been at any time instituted to declare them forfeited, and they not having been voluntarily surrendered by said last-named company.

And this defendant further answering says, that before the expiration of the said three years, within which time this defendant was by the terms of its charter required to construct said Tecumseh branch north from the village of Tecumseh to the village of Jackson, an act of the Legislature of the State of Michigan, entitled "An act to authorize the Michigan Southern Railroad Company to repair their road with heavy rails, and for other purposes," approved March 31, 1849, was passed, by which the time for completing the said Tecumseh branch to Clinton, in the county of Lenawee, and from thence to Jackson, in the county of Jackson, was thereby extended for three years from the time when the same was required to be completed in the original act incorporating this defendant, which said act last mentioned received the assent of this defendant in the manner required to give effect to the same.

And this defendant further answering says, that by reason of the large outlay of money required to complete and bring into operation the western portion of its said road within the time required by its charter, and also to relay such portions of the said road as were by said charter required to be relaid, and at the same time to keep and maintain upon said road a sufficient number of cars, engines, and operatives, and to build the necessary buildings upon its said main line of road, so as to be able to perform the continually increasing amount of business along said line with satisfaction to the business and traveling community, this defendant, although intending so to do at the earliest practicable period, was not able actually to commence, construct, or finish any portion of said Branch Railroad northward from the village of Tecumseh to the village of Jackson, within the six years as contemplated by the said acts of the said legislature of Michigan hereinbefore referred to; but this defendant further answering says, that a regular meeting of its board of directors was holden pursuant to adjournment at the office of this defendant in the city of New York, in the State of New York, on the twenty-sixth day of April, 1852, at ten o'clock in the forenoon of said day; that at said meeting were present a majority of the whole number elected of said board of directors; and that at said meeting there were, among others, two certain resolutions adopted unanimously by said board, and which resolutions were and are in the words following, to wit: "Resolved, that for the purpose of extending, constructing, and completing the Tecumseh Branch, as provided in the

sixth section of the charter of this company, books of subscription to the stock of the company to the amount of three hundred thousand dollars be opened at the office of the company in the city of New York on the tenth day of May next, at nine o'clock a. m., and that the said books be closed as soon as that amount be subscribed thereto by responsible parties."

"Resolved, that the chief engineer be instructed to cause the line of the Tecumseh Branch, and its extension to Jackson, to be surveyed, and a report and maps thereof made to the board as soon as convenient, consistently with other business upon the road."

And this defendant further answering says, that on the said tenth day of May, at the time and place appointed in said first-named resolution, the said books of subscription were opened by this defendant, by its said board of directors, and in pursuance of said resolution, and that thereupon was subscribed by responsible persons the said sum of three hundred thousand dollars, and which said sum has been paid in, or secured to this defendant.

And this defendant further answering says, that the said subscriptions to the capital stock of this defendant having been so made and paid in as aforesaid, and in accordance with the sixth section of the act of the legislature incorporating this defendant, and the same having been fully complied with in all respects whatever, this defendant has proceeded to construct the said Tecumseh Branch, north from Tecumseh towards the village of Jackson, without any unnecessary delay, and as required by its said charter. And this defendant intends to construct and complete the same at as early a day as possible, so as to furnish facilities for the business along the line thereof, now seeking an outlet to market; and this defendant claims that it has a legal and valid right to so construct and complete the same from said Tecumseh northwards as aforesaid *as aforesaid*, had the said stock for said Branch road not been subscribed, unless restrained by the State, the said complainant having no authority to question that right.

And this defendant further answering says, that although the purchase price of the road of this defendant, as purchased by it of the said State, was less than the sum agreed to be paid by the said complainant for the said Central Railroad, yet at that time both prices were deemed by the State to be a fair valuation respectively of said roads, taking into consideration the greater length of the said Central Railroad, the larger city at the eastern terminus thereof, and the more thickly inhabited country along its line, and that the sale of the said Southern road was subordinate to the sale of the said Central road only in this: That notwithstanding the said State of Michigan had determined as hereinbefore stated to sell and dispose of all its works of internal improvements at the earliest possible period, yet that the State had also come to the determination not to sell one of said roads unless the other was sold at the same time.

And this defendant further answering says, that all the privileges, special rights, and protections contained in the charter of the said com-

plainant are substantially embraced in the charter of this defendant, excepting so far as such privileges, special rights, and *or* protections may be circumscribed by the not inserting in this defendant's charter a section similar to and of like import with section ten of the said charter of the said complainant; and although this defendant admits that a section similar to said section ten was reported originally to the legislature as forming a part of the charter of this defendant, yet this defendant says that said section was stricken out at the request of persons residing in the city of Monroe, in said State, and which request was then and there acceded to by the persons who were then in attendance upon said legislature, seeking to obtain from it the act of incorporation of this defendant.

And this defendant further answering admits, that by an act of the legislature of the State of Michigan, entitled "An act to incorporate the Erie and Kalamazoo Railroad Company," approved April 22, 1833, the said Erie and Kalamazoo Railroad Company were granted power to construct a railroad, with a single or double track, from Port Lawrence, (now Toledo,) through or as near as practicable to the village of Adrian, and thence on the most eligible route to such point on the Kalamazoo river as they might deem proper and needful.

And this defendant further answering says, that it is uninformed, save by complainant's said bill, whether the said Erie and Kalamazoo Railroad Company were previous to the year 1846, or at any other time, insolvent, or whether the said company owed any sums of money to the laborers or mechanics who constructed the road of said company, or to any other persons, which were not or could not have been paid on demand, or whether any judgments had been obtained against said company which would not have been paid on demand, or which could not have been collected out of the corporate property of said company; but this defendant admits that certain proceedings, by quo warranto or otherwise, were commenced in the supreme court of the said State of Michigan for the purpose of having the charter of the said company declared forfeited; but this defendant says that said proceedings, as this defendant is informed and believes, were afterwards discontinued by the attorney general of said State, and that no further action has been had thereon.

And this defendant says, that the said Erie and Kalamazoo Railroad Company is now entirely solvent, and ready and able to pay any and all legal claims against said company, and that said company does now and has for the space of six years last past, as this defendant verily believes, complied in all respects with its act of incorporation and the conditions of its charter.

And this defendant further answering says, that it admits there was passed by the legislature of the said State of Michigan, and approved May 18, 1846, an act entitled "An act in regard to the Erie and Kalamazoo Railroad Company;" but this defendant denies that the said act last mentioned was accepted by any person or persons or corporation authorized to accept the same, and this defendant therefore insists

that the said act has no binding force or effect whatever upon the said Erie and Kalamazoo Railroad Company as at present organized.

And this defendant further answering says, that although it was not the policy of the said State of Michigan to discountenance the building or constructing of any work of internal improvement except such as would tend to increase the monopoly in the carrying-trade now claimed by the said complainant; yet this defendant says, that in the passage of the said act last before referred to, it verily believes that the provision therein incorporated forbidding the said Erie and Kalamazoo Railroad Company from extending their said railroad to a point on the Kalamazoo river or beyond the village of Adrian, in the county of Lenawee, was interpolated in the said act, through the instigation and interference of the agents of the said complainant, and without any knowledge on the part of a large majority of the members of the said legislature of the objects intended to be accomplished by the said complainant, thereby the act incorporating the said complainant having been passed and approved prior to that time.

And this defendant further says, that there were at the time of the passage of the act incorporating the said complainant, and have also been passed since that time, charters of railroads running from the eastern and southern boundary of the State up to and beyond the line of the road of the said complainant other than the charter of the Erie and Kalamazoo Railroad Company.

And this defendant further answering admits, that its cars do run regularly and continually over and upon that part of the Erie and Kalamazoo Railroad which lies between the village of Adrian and Toledo aforesaid, and that said cars are run *as* connection with those upon the road of this defendant, all of which this defendant claims it has a valid and legal right to permit and authorize so long as the said Erie and Kalamazoo Railroad Company shall consent thereto; and this defendant admits that a portion of the travel and commerce of its said road passes over and upon said Erie and Kalamazoo Railroad, but how much or what exact portion thereof this defendant is now uninformed, and cannot state.

And this defendant further answering says, that the interest of the traveling public, as well as the business community, require that there should be as few changes of cars as possible, upon long lines of roads; that, if it should be required, upon the arrival at the boundary line of a state, of any train of cars, that the passengers should transfer themselves and their baggage to another train of cars, the annoyance and delay occasioned thereby, as well as by the transhipment of produce thereon, would greatly prevent intercommunication between different portions of the country, and render nearly unavailable the continually increasing facilities for rapid communication by railroad over the vast extent of territory of the United States.

And this defendant further answering denies, that the said city of Toledo is either in fact or in name a terminus of its said road, but this defendant insists, that the eastern terminus of its said road is at the city of Monroe, in the county of Monroe, and said State of Michigan.

And this defendant further answering denies, upon information and belief, that prior to the year 1846, or at any other time, the then commissioners of internal improvements, of the State of Michigan, either as individuals, or in their public or official capacity, or as agents of, or in behalf of, said State, caused any portion of the track of said Erie and Kalamazoo Railroad Company to be torn up or destroyed, without the express consent of said company; and this defendant submits, that had the said commissioners so acted, they would have been liable to have been proceeded against criminally therefor; and further, that the said State of Michigan has never encouraged, through its officers or otherwise, any course of policy which would result in, or sanction the violation of, any law of the State, how much soever the said policy might meet the approbation of the said complainant or its agents.

And this defendant further answering says, that it has not. at any time, either by its officers, agents, or in any other manner, advertised for any loan of any sum of money whatever, for the purpose of constructing the said Tecumseh Branch northward, to the village of Jackson; but, that it has commenced the construction of said branch, and intends to complete the same as authorized and demanded by the provisions of its said charter and the laws of the State.

And this defendant further answering admits, that it has already located the intended track of the said extension of the said Tecumseh branch to the said village of Jackson, and have, by its engineers, issued proposals for contract for grading the same; and has also, by its said engineers, let the contract for the said grading, but, to what person or persons, this defendant does not now know, and is uninformed save by the said complainant's bill of complaint; and this defendant expects and requires, that the said contractors, whomsoever the same may be, shall perform their said contract according to the terms thereof.

And this defendant further answering admits, that it has commenced acquiring rights of way for the said Tecumseh Branch, and that it has nearly, if not entirely, acquired the same, up to the eastern boundary line of the county of Jackson, in said State; and that it intends to procure the rights of way along the whole distance of said line, as rapidly as the force at its command will permit, unless restrained by the order of this honorable court.

And this defendant further answering admits, that for the space of about ten miles from the village of Jackson, the projected line of its said intended extension of said Tecumseh Branch runs in a northwesterly direction towards the village of Jackson, and is, for the said distance of ten miles, within five miles of the present line of the said railroad of the said complainant; and this defendant says, that the said contemplated extension of the Tecumseh Branch road does not approach within five miles of the line of raiload of the said complainant, elsewhere than in the said county of Jackson.

And this defendant further answering denies, that, by the extension of the said Tecumseh Branch Railroad, from the village of Tecumseh

to the village of Jackson, together with that portion of the Erie and Kalamazoo, between Adrian and Toledo, there would or could be formed or constituted, either in fact or effect, one railroad from Toledo, in the State of Ohio, to the said village of Jackson.

And this defendant further answering denies, that the Tecumseh branch of its said road connects therewith at said village of Adrian, but, that the same connects with its main line about five miles east of said village, and by the switch there placed the train of cars which might or does pass over the said Tecumseh branch, would necessarily proceed in an easterly direction towards the city of Monroe, the eastern terminus of this defendant's said road, unless the said train should be backed up to said village of Adrian, over the distance of the said five miles.

And this defendant further answering says, that the Tecumseh branch of its said road, when completed on the line now located for the same up to the said village of Jackson, will commence at its intersection with the main line of this defendant's said road, about five miles distant from the said village of Adrian, and in an easterly direction therefrom, running thence in a northwesterly direction to the village of Jackson aforesaid; that by its connection with this defendant's said main line of road, by means of a switch, it becomes, in effect, one line of road from the said village of Monroe to the said village of Jackson. And this defendant further says, that the said Erie and Kalamazoo Railroad runs from the said city of Toledo, in the State of Ohio, to the said village of Adrian, also in a northwesterly direction, and is connected with the said railroad of this defendant at the said village of Adrian, by means of a switch, whereby a train of cars coming from said Toledo would continue on the said road of this defendant in a westerly direction towards the western terminus thereof; and that in order to place the cars of the said Erie and Kalamazoo Railroad upon the said Tecumseh branch of this defendant, it would be necessary that they should be backed along this defendant's main line of road, eastwardly from said village of Adrian to the junction of this defendant's main line with said Tecumseh Branch road, the said distance of about five miles.

And this defendant further says, that although the said Erie and Kalamazoo Railroad and the said Tecumseh Branch road runs in northwest and southeasterly directions, yet that the courses of the said railroads are nearly parallel with each other, and separated the one from the other at about an average distance from five to eight miles. And this defendant says, that it would require an entire change of route of the said Tecumseh Branch road for the distance of at least ten miles, and a very large expenditure of money, so to construct the same as to terminate at the village of Adrian, and then connect with the said Erie and Kalamazoo Railroad, so as to form one continuous line of railroad from the southern boundary of the State of Michigan to the village of Tecumseh, and which this defendant has not at any time intended to do, nor has this defendant at any time given out or threatened so to

connect the said Tecumseh Branch Railroad with the said Erie and Kalamazoo Railroad, so as to form, either in fact or effect, one railroad or a continuous line of railroad from said Tecumseh, or from said Jackson, either to Toledo, in the State of Ohio, or to the southern boundary of the State of Michigan. And this defendant further answering denies, that the said Tecumseh Branch Railroad when extended to Jackson, as contemplated by this defendant, will, with the said Erie and Kalamazoo Railroad, form, either in fact or effect, one railroad from Toledo, in the State of Ohio, to Jackson, or a railroad running from the southern boundary of the State of Michigan, westwardly of the county of Wayne, to within five miles of the line of the said railroad of the said complainant, or that the said Tecumseh Branch road and the said Erie and Kalamazoo Railroad would, together, form a continuous line of roads, which could be operated together as one railroad; and this defendant submits, that the extension of the said Tecumseh Branch Railroad to the village of Jackson is no violation of the rights, privileges, or guaranties secured to the said complainant by its said charter.

And this defendant further answering, denies that the extension of the said Tecumseh Branch Railroad of this defendant, from the said village of Tecumseh to the said village of Jackson, will, either in fact or effect, form one railroad or a continuous line of railroad from the eastern boundary of the said State of Michigan, which, running westwardly of Wayne county, in said State, will approach within five miles of the said road of the said complainant; nor will the said contemplated extension of the said Tecumseh Branch Railroad be, either in fact or effect, a continuation or extension of the said Erie and Kalamazoo road beyond the village of Adrian, towards the Kalamazoo river.

And this defendant further answering says, that it admits that the said complainant has never given its consent to the construction of the said contemplated railroad from Tecumseh to Jackson, or of any part thereof; and this defendant submits, that the opposition of the said complainant to the construction of the said contemplated road arises from the apprehension on its part, that the construction of said road would tend to break down the monopoly of the carrying-trade for all the central and the greater part of northern Michigan, which the said complainant now enjoys, and would furnish facilities for intercommunication between various parts of the State, und also cheaper, speedier, and better outlets to market than any which can be furnished by the said complainant; all of which advantages to be gained by the constructing the said road, this defendant believes, and therefore submits, has never been, and it verily trusts will never be, the policy of the said State of Michigan to prevent, or in any manner retard.

And this defendant further answering denies, that it has at any time given out or asserted that it did furnish, had furnished, or would furnish the requisite moneys to third persons, to purchase or procure the right of way or fee of the land for the track or uses of the said contemplated railroad, to be held by said third persons, or any others who

might or would hold or permit the same to be used for the track or use of the said contemplated road, but this defendant has at all times avowed its determination to build the said Branch road, under and in conformity with the provisions of its charter, believing, as it does, that it is required so to do by the provisions of said charter, and that there is sufficient power conferred therein on this defendant to proceed and complete the same, without the necessity of seeking the consent of the said complainant.

And this defendant further submits, that this court has no jurisdiction whatever over the person of this defendant in this suit, nor has the said court any right or authority, in any manner, to interfere to take cognizance of the subject-matter of this suit, instituted by the filing of the said complainant's bill of complaint.

And this defendant submits to this honorable court, that in respect to all and every of the matters in the said complainant's bill mentioned and complained of, as the same are set forth in said bill, the said complainant is not entitled to any relief from a court of equity, and this defendant hopes it shall have the same benefit of this defence as if it had demurred to the said complainant's bill. And this defendant denies all unlawful combination and conspiracy in the said bill charged, without that any other matter or thing material or necessary for this defendant to make answer unto and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain, and prove as this court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

[L. S.] JOHN B. JERVIS,
Pres. Mich. Sou. R. R. Co.
J. M. HOPKINS,
Sec'y Mich. Southern R. R. Co.

STATE OF NEW YORK,
City and county of New York, ss:

John B. Jervis, of said city and county, being duly sworn says, that he is the president of the Michigan Southern Railroad Company, a company incorporated by the laws of, and doing business in the State of Michigan; and deponent further says, that he is one of the directors of the said company, and has been such director for the space of three years and upwards last past. And deponent says, that the seal affixed to the foregoing answer of the said Michigan Southern Railroad Company is the seal of the said company duly affixed thereto by the direction of this deponent; and deponent further says, that he has heard read the said answer subscribed by him as such president as aforesaid, and knows the contents thereof, and that he is acquainted with the business of said company during the period of his said directorship. And deponent says, that the said answer is true of his own knowledge,

except as to the matters which are therein stated to be on the information or belief of the said defendant, and as to those matters he has been so informed and verily believes it to be true.

JOHN B. JERVIS.

Sworn and subscribed before me this sixth day of Sept., A. D. 1853.

JOSEPH C. LAWRENCE,
Commissioner of the State of Michigan in and for the State of New York.

STATE OF NEW YORK,
New York city and county, ss:

On this sixth day of September, in the year of our Lord one thousand eight hundred and fifty-three, before me, Joseph C. Lawrence, a commissioner in and for the State of New York, duly appointed and commissioned by the governor of the State of Michigan to take the acknowledgment and proof of deeds to be used or recorded in said State of Michigan, and to administer oaths and affirmations, personally appeared John B. Jervis, who, being by me duly sworn, did depose and say, that he has read the foregoing answer by him subscribed; that he knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated to be upon his information and belief, and as to those matters he believes it to be true.

Given under my hand and official seal the day and year above written.

[L. S.] JOSEPH C. LAWRENCE,
Commissioner of the State of Michigan in and for the State of New York, 65 Wall st., N. Y.

And afterwards, to wit, on the said twenty-third day of November, one thousand eight hundred and fifty-three, the affidavit of Daniel D. Sinclair was filed in the office of the register of said court, which affidavit is in the words following, to wit:

STATE OF MICHIGAN,
Circuit Court for the County of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, Elisha C. Litchfield, Thomas G. Davis, John B. Jervis, Guy Foote, Amos Root, and Moses A. McNaughton.

STATE OF MICHIGAN,
County of Wayne, ss:

Daniel D. Sinclair, of said county, being duly sworn, says, that he is the train-master of the eastern division of the said Michigan Southern

Railroad, and has been such train-master for about the space of three years last past; and deponent says, that he is well acquainted with the running of the trains of cars on said railroad, with the use and management of the engines thereon, and with the loading and unloading of the freight cars upon said road, and the general management of said freight cars, as well as the freight engines and the gravel and dirt trains upon said eastern divisions; and deponent says, that the Tecumseh Branch of said Michigan Southern Railroad intersects the main line thereof about five miles distant from the city of Adrian, in said county of Lenawee, and in an easterly direction therefrom; that the said roads are connected with each other thereat by means of a switch, so that a train coming from Tecumseh would necessarily pass along on the main line of road to the city of Monroe; and that such train could not come on to said city of Adrian without being backed up to said city over the said main line for the said distance of about five miles; and deponent further says, that the Erie and Kalamazoo Railroad approaches the said city of Adrian, from Toledo, in a northwesterly direction, and unites with the main line of the Southern Railroad, at the city of Adrian, by means of a switch, so that a train coming from Toledo would necessarily continue on to the western terminus of the said Southern Railroad, and could not be placed upon the track of the Tecumseh Branch without backing from Adrian down to the intersection of said branch with the main line.

And deponent further says, that the portion and courses of *of* the said Tecumseh branch, Erie & Kalamazoo Railroad, and the Michigan Southern Railroad, in the county of Lenawee and the county adjacent thereto, are as delineated on the map or plat hereto annexed. And deponent says, that the only manner in which a train of cars coming from Tecumseh could reach Adrian in a continuous line, would be by constructing another course at the intersection of the Branch road with the main line, and there, by means of a switch connected therewith, so change the course of said train at said intersection, that thereafter the said train would proceed in a westerly direction, on said line, to Adrian; that in order to have the same train proceed onward to Toledo, it would be necessary to have the engine changed about, and again connected with the train at the other end thereof, which would require much labor; that it would be necessary to change nearly the whole line of the said Tecumseh Branch road, in order to connect the same with the Erie & Kalamazoo Railroad at Adrian, so as to form a continuous line of railroad from said Tecumseh to Toledo.

And deponent further says, that by the present construction of the *time* of the Erie & Kalamazoo Railroad, no curve could be made at the city of Adrian by which trains of the Erie & Kalamazoo Railroad could pass on to the main line of the Michigan Southern Railroad, headed in an easterly direction.

And deponent further says, that trains of cars are backed over a railroad with great difficulty and danger; that an engine cannot back as

large a train of cars over a railroad as it can draw thereon; that the backing of cars for any distance is dangerous, by reason of the greater liability of cars to fly off from the track than a heavy engine, and also by the ability of the engine-man or his associates to see whether there are any obstructions upon the track, unless the train should proceed at a very low rate of speed; that there is about the same relative difficulty in backing trains of cars as is in backing a train upon an ordinary highway; that upon railroads, as far as the knowledge of this deponent extends, it is not allowed to engine-men or others to back trains over a road, except when absolutely necessary, and then only to a station where there may be what is called a "turn-table."

And deponent further says, that the trains of passengers' cars over the said Tecumseh Branch, heretofore, have connected with a train running to Monroe; that the train from Tecumseh has backed up to Adrian from the said intersection, and then has proceeded directly to Monroe; that nearly all the freight brought over said Tecumseh Branch has proceeded directly to Monroe; that the backing up of said trains has been viewed, by the officers and agents of the said Southern Railroad Company, so far as the knowledge of this deponent extends, as extremely inconvenient and dangerous, and only permitted from the fact that but a small amount of business passed over the said Tecumseh Branch, and there being no other mode of bringing trains from said Tecumseh Branch to Adrian.

And this deponent further says, that in the opinion of this deponent, when the said Tecumseh Branch shall have been extended to Jackson, the increased business of said branch will require that the trains therefrom pass over the main line of road to Monroe, unless a curve should be made at said intersection, so as to bring the down trains on said branch on to the main line, headed westwardly; in which case, in order to place the said train on the Erie & Kalamazoo Railroad, it will be necessary to tranship the passengers and produce at Adrian, or to change fronts of the whole train.

D. D. SINCLAIR.

Sworn and subscribed before me, this first day of September, 1853.

L. B. BOWEN,
Notary Public, Lenawee co., Mich.

[*For plat see original, page* 81.]

Afterwards, to wit, on the first day of December, one thousand eight hundred and fifty-three, a precipe for entering the appearance of defendants in this cause was filed in the office of the register of said court, which precipe is in the following words, to wit:

STATE OF MICHIGAN,
Circuit Court for the county of Wayne.

In Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton and Guy Foote.

The appearance of the above named defendants is hereby entered by Higby & Foote, their solicitors; and on motion of said solicitors, it is ordered, that said complainants serve a copy of its bill of complaint on the solicitors for said defendants within fifteen days after notice of this order on the solicitors for said complainants, or that said bill will be dismissed.

HIGBY & FOOTE,
Solicitors for Defendants.

To E. HAWLEY, Jr., Esq.,
Reg'r in Chancery, Wayne co., Mich.

Please enter the above order in the book of common orders, kept by you in your office, in the city of Detroit, and oblige

HIGBY & FOOTE.

Dated Jackson, November 30, 1853.

In pursuance of the foregoing precipe, the following order was duly entered in the rule-book kept by the register of said court, in his office, as follows, to wit:

THE CIRCUIT COURT FOR THE COUNTY OF WAYNE, IN CHANCERY, complainants,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis and others, defendants.
} Dec. 1, 1854.

The appearance of the above named defendants is hereby entered by Higby & Foote, their solicitors; and on motion of said solicitors, it is ordered, that the complainant serve a copy of its bill of complaint on the solicitors for said defendants, within fifteen days after notice of this order on the solicitors for said complainant, or that said bill be dismissed.

HIGBY & FOOTE,
Sol'ts for Def'ts.

Entered.

E. HAWLEY, Jr., *Register.*

Afterwards, to wit, on the second day of December, one thousand eight hundred and fifty-three, the joint and several answers of John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton and Guy Foote, to the complainant's bill of complaint, was filed in the office of the register of said court, which answer is in the words and figures following, to wit:

STATE OF MICHIGAN,
Circuit Court for the county of Wayne, in Chancery.

The joint and several answers of John B. Jervis, Elisha C. Lishfield, Thomas G. Davis, Amos Root, Moses A. McNaughton, and Guy Foote, defendants, to the bill of complaint of the Michigan Central Railroad Company, complainants against these defendants, and the Michigan Southern Railroad Company, defendants.

These defendants now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exceptions to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answers thereunto, or unto so much thereof as these defendants are advised are material for them to make answer unto, they answering say, that they admit that the said complainant was constituted a body corporate and politic by the name and style of the Michigan Central Railroad Company, with perpetual succession in virtue of the provisions of a certain act of the legislature of the State of Michigan, entitled an act to authorize the sale of the Central Railroad, and to incorporate the Michigan Central Railroad Company, approved on twenty-eighth day of March, A. D. 1846, wherein it was declared that in said corporate name the said complainant might have and exercise all the powers, rights, privileges, and immunities, which were, or might be, necessary to carry into effect the purposes and objects of the said act, as the same were therein set forth, and that within the time limited by the second section of said act, the said complainants accepted the same and the charter granted to it thereby, and did pay at the State treasury, to the said State of Michigan, the sum of five hundred thousand dollars; but whether the said State of Michigan sold, granted and conveyed all the rights, title, and interest of said State in and to said Central Railroad, and all its appurtenances, as particularly mentioned in said second section, for the sum of two millions of dollars, and whether the said two millions of dollars was ever fully paid by said complainants to said State, or at the time, in the manner, and in accordance with the provisions of said act, these defendants do not know, and cannot state, and therefore leave the said complainants to make such proof thereof as it may be advised.

And these defendants further answering say, that they admit that the said complainant was put in possession of some portion of said Central Railroad; but how much thereof, and whether upon the conveyance and payment alleged in said complainant's bill, pledging the right,

title, or interest, of the said State of Michigan, of, in or to the said Central Railroad, or others mentioned in said act, became then or or thereafter vested in, or became the property of, the said complainant, these defendants do not know, and cannot state, and therefore leave the said complainant to make such proof thereof as it may be advised.

And these defendants admit that ever since the incorporation of the said complainant a board of directors has annually been elected, and that one of said board has uniformly been elected president, and that the first set of directors in said act named opened books to receive subscriptions to the capital stock of the said complainant, and that at the time and place of the opening of said books the sum of two millions of dollars was subscribed to the capital stock of the said complainant.

And these defendants further answering admit, that the said complainant constructed, completed, and put in operation, a railroad from the city of Detroit to Lake Michigan, and at a point on the southern boundary line of said State, for the transportation of property and passengers, and that the same is now, and has ever since its completion been in operation; and that said railroad runs through the village of Jackson, in said State, but whether the said railroad was constructed, completed, and put in operation, within the time limited by said act, and whether the said complainant has complied with all the provisions or requirements of said act, these defendants do not know, and cannot state, and therefore leave the said complainant to make such proof thereof as it may be advised.

And these defendants further admit, that the chief and permanent place of business of the said complainant within the State of Michigan, is in the city of Detroit, in said county of Wayne, and that some of its chief officers and its active establishments are in said city, and that said city is the residence of some of its principal and active officers, and where is transacted within the State of Michigan the principal of its affairs.

And these defendants further answering admit, that anterior to the time of the alleged sale of the said Central Railroad to the said complainant, the said State of Michigan had, in prosecution of its internal improvement system, partly laid out and constructed three separate and independent railroads running through the said State, parallel, or nearly so, to each other, of which that alleged to be purchased by the said complainant was one, and that purchased by the Michigan Southern Railroad Company was another; and that up to the time of the purchase of one by said Michigan Southern Railroad Company, and the alleged purchase of the other by the said complainant, both of said railroads were owned, managed, and controlled, by the said State of Michigan.

And these defendants further answering submit, that they are not bound to answer the allegations in said complainant's bill, as to what has been or is the policy of the said State, or what might have actuated it in making the alleged sale of the said Central Railroad to the said complainant, except so far as the same may appear from its said charter.

And these defendants further answering admit, that said section five of the act entitled "An act to authorize the sale of its Central Railroad, and to incorporate the Michigan Central Railroad Company," approved March 28, 1846, does contain the provision as quoted in said complainant's bill of complaint, and further that the said complainant does pay to the said State of Michigan an annual tax, but the amount thereof these defendants do not know, and cannot state, and therefore leave the said complainant to make proof thereof if it be so advised.

And these defendants further answering say, that there was passed by the legislature of the State of Michigan an act entitled "An act to authorize the sale of the Southern Railroad, and to incorporate the Michigan Southern Railroad Company," approved May 9, 1846, section thirty-eight of which said last mentioned act did contain the provision as alleged in said complainant's bill, and section six thereof did also contain the provision as alleged in said bill; and further, that in pursuance thereof the said Southern Railroad was sold, and purchased by the Michigan Southern Railroad Company, for the sum of five hundred thousand dollars; and that the said Michigan Southern Railroad Company has entered into possession of the said Southern Railroad, and its privileges and appurtenances, as in said last mentioned act described.

And these defendants further answering say, that before the expiration of the said three years, within which time the said Michigan Southern Railroad Company was by the terms of its charter required to construct said Tecumseh Branch north from the village of Tecumseh to the village of Jackson, an act of the legislature of the State of Michigan, entitled "An act to authorize the Michigan Southern Railroad Company to repair their road with heavy rails, and for other purposes," approved March 31, 1849, was passed, by which the time for completing the said Tecumseh Branch to Clinton, in the county of Lenawee, and from thence to Jackson, in the county of Jackson, was thereby extended for three years from the time when the same was required to be completed in the original act incorporating the said Michigan Southern Railroad Company, which said act last mentioned received the assent of the said Southern Railroad Company in the manner required to give effect to the same.

And these defendants further answering say, that by reason of the large outlay of money required to complete and bring into operation the western portion of the said Michigan Southern Railroad within the time required by the charter of the said Michigan Southern Railroad Company, and also to re-lay such portions of the said road as were by said charter required to be re-laid, and at the same time to keep and maintain upon said road a sufficient number of cars and engines, and operatives, and to build the necessary buildings upon the main line of said road, so as to be able to perform the continually increasing amount of business along said line with satisfaction to the business and traveling community, the said Michigan Southern Railroad Company, although intending so to do at the earliest practicable period, was not able actually to commence, construct, or finish any portion of said Tecumseh

Branch Railroad from the village of Tecumseh northward to the village of Jackson within the six years, as contemplated by the said act of the legislature of the State of Michigan herein before referred to.

But these defendants further answering say, that a regular meeting of the board of directors of the said Michigan Southern Railroad Company was holden pursuant to adjournment, at the office of the said last named company, in the city of New York, in the State of New York, on the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and fifty-two, at ten o'clock in the forenoon of said day; that at said meeting were present a majority of the whole number elected of said board of directors, and that at said meeting there were among others two certain resolutions adopted unanimously by said board, and which resolutions were and are in the words following, to wit:

"Resolved, that for the purpose of extending, constructing, and completing the Tecumseh Branch, as provided in the sixth section of the charter of the company, books of subscription to the stock of the company, to the amount of three hundred thousand dollars, be opened at the office of the company, in the city of New York, on the 10th day of May next, at nine o'clock a. am., and that the said books be closed as soon as that amount shall be subscribed thereto by responsible parties."

"Resolved, that the chief engineer be instructed to cause the line of the Tecumseh Branch, and its extension to Jackson, to be surveyed, and a report and maps thereof made to the board as soon as convenient consistently with other business upon the road."

And these defendants further answering say, that on the tenth day of May, at the time and place appointed in said first mentioned resolution, the said books of subscription were opened by the said Michigan Southern Railroad Company, by its said board of directors, in pursuance of said resolution; and that thereupon was subscribed by responsible persons the said sum of three hundred thousand dollars, and which said sum has been duly paid in to said Michigan Southern Railroad Company.

And these defendants further answering say, that the said subscriptions to the capital stock of the said Michigan Southern Railroad Company having been so made and paid in as aforesaid, and in accordance with the sixth section of the act of the legislature incorporating said company, and the same having been fully complied with in all respects whatever, the said Michigan Southern Railroad Company has proceeded to construct the said Tecumseh Branch northward from Tecumseh toward the village of Jackson without any unnecessary delay, and as required by its said charter.

And these defendants are informed and believe that the said Michigan Southern Railroad Company intends to construct and complete the same at as early a day as possible, and these defendants intend also to assist in such construction so far forth as such assistance may be required.

And these defendants further answering admit, that by an act of the legislature of the State of Michigan, entitled "An act to incorporate the Erie and Kalamazoo Railroad Company," approved April 22, 1833, the said Erie and Kalamazoo Railroad Company were granted power to construct a railroad, with a single or double track, from Port Lawrence (now Toledo) through or as near as practicable to the village of Adrian, and thence on the most eligible route to such point on the Kalamazoo river as they might deem proper and needful.

And these defendants further answering say, that they are uninformed, save by complainant's said bill, whether the said Erie and Kalamazoo Railroad Company were, previous to the year one thousand eight hundred and forty-six, or at any other time, insolvent; or whether the said company owed any sums of money to the laborers or mechanics who constructed the road of said company, or to any other persons, which were not or could not have been paid on demand; or whether any judgments had been obtained against said company which would not have been paid on demand, or which could not have been collected out of the corporate property of said company; but these defendants admit that certain proceedings, by quo warranto or otherwise, were commenced in the supreme court of the State of Michigan, for the purpose of having the charter of said company declared forfeited. But these defendants say, that said proceedings, as they are informed and believe, were afterwards discontinued by the attorney general of said State, and that no further action has been had thereon. And these defendants say, that the said Erie and Kalamazoo Railroad Company is now entirely solvent, and ready and able to pay any and all legal claims against said company; and that said company does now, and has for the space of six years last past, as these defendants verily believe, complied in all respects with its act of incorporation and conditions of its charter.

And these defendants further answering say, that they admit there was passed by the legislature of the State of Michigan, and approved on the 18th day of May, in the year one thousand eight hundred and forty-six, an act entitled "An act in regard to the Erie and Kalamazoo Railroad Company," but these defendants deny that the said act last mentioned was accepted by any person or persons, or corporation, authorized to accept the same; and these defendants therefore insist that the said act has no binding force or effect whatever upon the said Erie and Kalamazoo Railroad Company, as at present organized. And these defendants further answering deny, that by the passage of the act of the legislature lastly herein before referred to, it was intended by said legislature to prohibit the construction of any railroad from the southern boundary of the State of Michigan up to or across the line of the road of the said complainant; but they insist that said act last named was so passed, in part, for the purpose of protecting the said Michigan Southern Railroad Company from the competition of a rival line of railroad from the village of Adrian to the village of Jackson. And these defendants further say, that there were at the time of the passage

of the act incorporating the said complainant, and have also been passed since that time, charters for railroads, running from the eastern and southern boundary of the State, up to and beyond the line of the road of the said complainants, other than the charter of the Erie and Kalamazoo Railroad Company. And these defendants further answering admit, that the cars of the said Michigan Southern Railroad Company do run regularly and continuously over and upon that part of the Erie and Kalamazoo Railroad which lies between Adrian and Toledo aforesaid, and that said cars are run in connection with those upon the Michigan Southern Railroad, all of which these defendants insist the said Michigan Southern Railroad has a valid and legal right to permit and authorize, so long as the said Erie and Kalamazoo Railroad Company shall consent thereto. And these defendants admit, that during the closing of navigation of Lake Erie, the largest portion of the travel and commerce of the said Michigan Southern Railroad passes over and upon the said Erie and Kalamazoo Railroad, but what exact portion thereof these defendants do not know and cannot state. And these defendants deny that the said city of Toledo is either in fact or in name a terminus of the Michigan Southern Railroad; but they say that the eastern terminus of said railroad is at the city of Monroe, in the county of Monroe and State of Michigan. And these defendants further answering admit, that the said Michigan Southern Railroad Company has already located the intended track of the said extension of the said Tecumseh Branch to the said village of Jackson, and has, by its engineers and agents, issued proposals for grading and completing the same; and has also, by its said engineers, let the contract for the said grading to the defendant Thomas G. Davis, and others; and these defendants expect and intend to co-operate with the said Michigan Southern Railroad Company in the grading, building, and completing the said Tecumseh Branch, whenever their services may be required by said company. And these defendants further answering say, that it is true that the said Michigan Southern Railroad Company has commenced acquiring rights of way for the said Tecumseh Branch Railroad, and that it has nearly (if not entirely) acquired such rights of way up to said village of Jackson, and that the same have been procured by the aid and assistance of these defendants; and that these defendants expect and intend to aid and assist still further in procuring said rights of way, until the same shall have been wholly obtained from said village of Tecumseh to the said village of Jackson. And these defendants further answering say, that for the space of about ten miles from the village of Jackson the projected line of the said intended extension of said Tecumseh Branch runs in a northwesterly direction, towards the village of Jackson, and is for the said distance of ten miles within five miles of the present line of the said railroad of the said complainant; and these defendants also say that the said contemplated extension of the Tecumseh Branch road does not approach within five miles of the line of said railroad of said complainant elsewhere than in the said county of Jackson. And these defendants

further say, that the line of the railroad from the village of Tecumseh northward, to the village of Jackson, formerly established and laid out by the Jacksonburg and Palmyra Railroad Company, passed through the village of Michigan Centre, in said county of Jackson, (which last named village is about five miles, in an easterly direction, from said village of Jackson,) and for nearly the whole distance from thence to said village of Jackson the said line of said Jacksonburg and Palmyra Railroad was established and laid out upon the land which is now occupied by the track of the railroad of the said complainant. And these defendants further answering deny, that by the extension of the said Tecumseh Branch Railroad, from the village of Tecumseh to the village of Jackson, together with that portion of the Erie and Kalamazoo Railroad between Adrian and Toledo, there would or could be formed or constituted, either in fact or effect, one railroad from Toledo, in the State of Ohio, to the said village of Jackson.

And these defendants further answering deny, that the Tecumseh Branch of the said Michigan Southern Railroad connects therewith at the said village of Adrian, but that the same connects with the main line of said railroad, about five miles east of said village, and by the switch there placed the train of cars which might or does pass over the said Tecumseh Branch, would necessarily proceed in an easterly direction towards the said city of Monroe, the eastern terminus of the said Southern Railroad, unless the said train should be backed up to said village of Adrain, over the distance of said five miles, which will more fully appear by the map or plat of a portion of the said Tecumseh Branch, the said Southern Railroad, and the said Erie and Kalamazoo Railroad, hereto annexed, and which these defendants pray may be taken to be a part of this their answer to said complainant's bill of complaint.

And these defendants further answering say, that the Tecumseh Branch of the said Southern Railroad, when completed on the line now located for the same, up to the village of Jackson aforesaid, will commence at its intersection with the main line of said Southern Railroad, about five miles distant from said village of Adrian, and in an easterly direction therefrom, and runs thence in a northwesterly direction to the village of Jackson aforesaid; that by its intersection with said main line of said Southern Railroad by means of a switch, it becomes in effect one line of railroad from the city of Monroe to the said village of Jackson.

And these defendants further say, that the said Erie and Kalamazoo Railroad runs from the said city of Toledo, in the State of Ohio, to the said village of Adrian also in a northwesterly direction, and is connected with the said Southern Railroad at the said village of Adrain by means of a switch, whereby a train of cars coming from said Toledo would continue on the said Southern Railroad in a westerly direction towards the western terminus thereof, and that in order to place the cars of the said Erie and Kalamazoo Railroad upon the said Tecumseh Branch, it would be necessary that they should be backed along

the main line of said Southern Railroad eastwardly from said village of Adrian to the junction of the said main line with the said Tecumseh Branch Railroad the said distance of about five miles.

And these defendants further say, that although the said Erie and Kalamazoo Railroad, and the said Tecumseh Branch Railroad run in a northwest and southeasterly direction, yet that the courses of the said roads are nearly parallel with each other, and separated, the one from the other, at about an average distance of from five to eight miles.

And these defendants further say, that it would require an entire change of route of the said Tecumseh Branch Railroad for the distance of about ten miles, and a very large expenditure of money so to construct the same as to terminate at the village of Adrian, and there connect with the said Erie and Kalamazoo Railroad so as to form a continuous line of railroad from the southern boundary of the State of Michigan to the village of Tecumseh, which these defendants submit the said Michigan Southern Railroad Company has no power or authority to do under or by virtue of any law of said State.

And these defendants further answering deny, that the said Tecumseh Branch Railroad when extended to the said village of Jackson, upon the contemplated route thereof, will, with the Erie and Kalamazoo Railroad aforesaid, form either in fact or effect one railroad from Toledo, in the State of Ohio, to said village of Jackson, or a railroad running from the southern boundary of the State of Michigan westwardly of the said county of Wayne to within five miles of the line of the said railroad of the said complainant, or that the said Tecumseh Branch road, and the Erie and Kalamazoo Railroad, would together form a continuous line of road which could be operated together as one railroad; and these defendants submit that the extension of the said Tecumseh Branch Railroad to the village of Jackson is no violation of the rights, privileges, or guarantees secured to the said complainant by its said charter.

And these defendants further answering deny, that the extension of the said Tecumseh Railroad from the said village of Tecumseh to the said village of Jackson will, either in fact or effect, form one railroad or a continuous line of railroad from the eastern boundary of the State of Michigan, and which running westwardly of Wayne county in said State, will approach within five miles of the said road of the said complainant, nor will the said contemplated extension of the said Tecumseh Branch Railroad be either in fact or effect a continuation or extension of the said Erie and Kalamazoo Railroad beyond the village of Adrian towards the Kalamazoo river.

And these defendants further answering say, that they admit that the said complainant has never given its consent to the construction of the said contemplated extension of the said Tecumseh Branch Railroad to the said village of Jackson, or of any part thereof.

And these defendants submit, that the opposition of the said complainant to the construction of the said contemplated Tecumseh Branch Railroad arises from the apprehension on its part that the construction

of said road would tend to break down the monopoly of the carrying trade for all the central and the greater part of northern Michigan which the complainant now enjoys, and would furnish facilities for intercommunication between various parts of the State, and also cheaper, speedier, and better outlets to market than any which can be furnished by the said complainants, all of which advantages to be gained by the constructing the said Tecumseh Branch Railroad, these defendants believe, and therefore submit has never been, and they verily trust will never be, the policy of the State of Michigan to prevent, or in any manner retard.

And these defendants further answering submit, that this court has no right or authority in any manner to interfere, to take cognizance of the subject-matter of this suit, instituted by the filing of the said complainant's bill of complaint, and that in respect to all and every of the matters in the said bill mentioned and complained of as the same are set forth therein, the complainant is not entitled to any relief from a court of equity, and these defendants hope that they shall have the same benefit of their defence as if they had demurred to the said bill of complaint.

And these defendants deny all unlawful combinations and conspiracy in the said bill charged, without this, that any other matter or thing material or necessary for these defendants to make answer unto and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants are ready to aver, maintain, and prove as this court shall direct, and humbly pray to be herein dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) JOHN B. JERVIS,
By Guy Foote, his Attorney.
ELISHA C. LITCHFIELD,
By Guy Foote, his Attorney.
THOMAS G. DAVIS,
By Guy Foote, his Attorney.
AMOS ROOT,
By Guy Foote, his Attorney.
MOSES A. McNAUGHTON,
By Guy Foote, his Attorney.
GUY FOOTE.

HIGBY & FOOTE,
Sol'ts for Defendants.

STATE OF MICHIGAN,
County of Jackson, ss:

Guy Foote, of said county, being duly sworn says, that he is one of the defendants named in the foregoing answer; that deponent has read said answer and knows the contents thereof, and that the same is true

of his own knowledge, except as to the matters therin stated to be on the information or belief of the said defendants, and as to those matters he believes it to be true.

GUY FOOTE.

Sworn and subscribed before me this 30th day of November, A. D. 1853.

W. H. GIBSON,
Notary Public, Jackson county, Mich.

[*Fbr plat see original, page* 102.]

Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, Elisha C. Litchfield, Guy Foote, et al.

Amendments to the bill of complaint filed in the above entitled cause.

After the word State on the twenty-first line of the eighteenth page of the original bill on file, insert the following words, viz:

"And further your orator shows, that if the said contemplated railroad from Tecumseh to Jackson is permitted to be built and constructed, it, together with said Branch road to Tecumseh, and that portion of the said Southern road which lies easterly of the point where said Tecumseh Branch road connects therewith, will be, and constitute in fact and effect a railroad or railroads from the eastern boundary of the State which will approach westwardly of Wayne county, within five miles of the line of your orator's said Central road." And also by inserting after the word "road" on the eighth line of same page, "or railroads."

(Signed) J. W. BROOKS.

STATE OF MICHIGAN,
Wayne county, ss:

John W. Brooks, being duly sworn, maketh oath and says, that he has heard read the foregoing amendments, and knows the contents thereof, has knowledge of the facts therein stated, and that the same are true.

Sworn before me this twenty-first day of December, eighteen hundred and fifty-three.

C. R. GARDNER,
Notary Public, Wayne county, Michigan.

THE MICHIGAN CENTRAL RAILROAD COMPANY,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY,
Elisha C. Litchfield, Guy Foote, et al.

The Circuit Court for the county of Wayne, in Chancery.

The said complainants, by these solicitors, now move the court for leave to amend the bill of complaint filed in this cause, by inserting and incorporating therein the foregoing amendments, without prejudice, or affecting the injunction heretofore granted in said cause.

VAN DYKE, FRASER & GRAY,
Solicitors for Complainants.

Afterwards, to wit, on the 27th day of December, A. D. 1853, the several answers of the Michigan Southern Railroad Company to the amended bill of complaint was filed in the office of the register of said court, which answer is in the words and figures following, to wit:

STATE OF MICHIGAN,
Circuit Court for the county of Wayne, in Chancery.

The several answers of the Michigan Southern Railroad Company, one of the defendants to the amended bill of complaint of the Michigan Central Railroad Company, complainant against this defendant, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Guy Foote, Amos Root and Moses A. McNaughton, defendants.

This defendant now, and at all times hereafter, knowing and reserving to itself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for it to make answer unto, it answers and says, that it admits that the said complainant was constituted a body corporate and politic by the name and style of the Michigan Central Railroad Company, with perpetual succession, in virtue of the provisions of a certain act of the legislature of the State of Michigan, entitled An act to authorize the sale of the Central Railroad and to incorporate the Michigan Central Railroad Company, approved on the twenty-eighth day of March, A. D. 1846, wherein it was declared, that in said corporate name, the said complainant might sue and be sued, might have a common seal, and might have and exercise all powers, rights, privileges and immunities which were or might be necessary to carry into effect the purposes and objects of the said act, as the same were therein set forth; and this defendant further answering says, that it admits, that within the time limited by the second section of said act, the said complainant accepted the same and the charter granted to it thereby, and did pay at the State treasury to the said State of Michigan the sum of five hundred thousand dollars; but whether the said State of Michigan sold, granted and conveyed all the right, title and interest of said State in and to said Central Rail-

road, and all its appurtenances, as particularly mentioned in said second section, for the sum of two millions of dollars, and whether the said two millions of dollars was fully paid by said complainant to said State, at the time, in the manner, and in accordance with the provisions of said act, this defendant does not know, and cannot state, and, therefore, leaves the said complainant to make such proof thereof as it may be advised.

And this defendant further answering says, that it admits that the said complainant was put in possession of some portion of said Central Railroad, but how much thereof, and whether, upon the conveyance and payment alleged in said complainant's bill, all or any of the right, title or interest of the said State of Michigan, of, in, or to the said Central Railroad, or its appurtenances, or others mentioned in said act, became then or thereafter vested in, or become the property of the said complainant, this defendant does not know, and cannot state, and, therefore, leaves the said complainant to make such proof thereof as it may be able to do.

And this defendant further answering says, that whether ever since the incorporation of the said complainant a board of directors has annually been duly elected, or whether one of said board has uniformly been elected president, in accordance with the provisions of said act, this defendant does not know, and cannot state, and, therefore, leaves the said complainant to make such proof thereof as he may be advised; and this defendant further answering says, that whether the first set of directors in said act opened books to receive subscriptions to the capital stock of the said Michigan Central Railroad Company, in pursuance of the provisions of said act, or in any other manner, this defendant does not know, and cannot state; but this defendant denies that the whole amount of said capital stock was then or has been at any other time subscribed by any person or persons legally authorized to subscribe the same; and this defendant says that it has been informed, and verily believes, and so states the truth to be, that a large amount of the capital stock of said company has been issued without any authority of law whatever. And this defendant further answering admits, that the said complainant constructed, completed, and put in operation, a railroad from the city of Detroit to Lake Michigan, and at a point on the southern boundary line of said State for the transportation of property and passengers, and that the same is now, and has ever since its completion, been in operation; and that said railroad runs through the village of Jackson, in said State; but, whether the said railroad was so constructed, completed, and put in operation within the time limited by said act; and whether the said complainant has, in all things, or in any manner, complied with all or any of the provisions and requirements of said act, this defendant does not know, and cannot state, and, therefore, leaves the said complainant to make such proof thereof as he may be able to do.

And this defendant further answering says, that whether the chief or permanent place of business of the said complainant is in the city

of Detroit, in said county of Wayne, or whether the chief offices or active establishments of the said complainants are in said city, or whether it is the residence of the principal or active officers of said complainants, or is the chief place or where is transacted the principal of its affairs, this defendant is uninformed, save by the said complainant's bill of complaint, and therefore cannot state.

And this defendant further answering admits, that anterior to the time when the said Central Railroad was sold by said State and purchased by said complainant as alleged by it in said bill, the said State of Michigan had, in prosecution of its internal-improvement system, contemplated and in part laid out and constructed three separate and independent railroads running through the said State parallel or nearly so to each other, of which that alleged to be purchased by the said complainant was one, and that purchased by this defendant was another; and that up to the time of the purchase of one by this defendant, and the alleged purchase of the other by the said complainant, both of said roads were owned, managed, and controlled by the said State of Michigan; but this defendant submits that the same is wholly irrelevant, and cannot in any manner affect the question attempted to be brought in litigation by the said complainant in the filing his said bill of complaint.

And this defendant further answering denies, that for some time previous to the alleged sale of the Central Railroad to the said complainants, its management was found onerous or unprofitable to the State; but on the contrary, this defendant insists that the management of the said Central Railroad was quite profitable to the State, so much so as to pay, as this defendant is informed and believes, a larger per centum on the then cost of the same than it has at any time since that period earned or paid upon the capital invested therein, notwithstanding the said Central Railroad was only completed at that time as far west as Kalamazoo, in said State.

And this defendant further answering says, that it submits that it is entirely irrelevant for the said complainant to enter into a statement of what has been or is the policy of the State, or what might have actuated it in making the alleged sale of the said Central Railroad to the said complainant, except so far as the same may appear from the said charter; but this defendant, nevertheless, further answering upon this subject, so irrelevantly introduced in the said complainant's bill of complaint, says, that by a failure of the said State of Michigan to pay the principal or interest of its debt, some portion of which, before the said alleged sale of the said Central Railroad, had become due and owing from the said State to its various creditors, the credit and pecuniary responsibility of the said State in the estimation of capitalists and business men had greatly suffered, so much so that some of the officers of said State, in the purchase of iron-engines and spike to enable them to carry on and construct the different railroads at that time carried on by said State, were obliged to become personally responsible, in addition to the responsibility of the State for the payment of the money agreed to be

paid by said State; therefore, before the same could be procured, that by reason of such depreciated credit, the State could not carry on the said system of internal improvement so successfully and economically as would be done by a private and responsible company, nor obtain the means to relay the track of such of its said roads as were becoming impaired by use or decay; and although it was proposed on the part of no inconsiderable minority of the citizens of the State at that time that the works of internal improvement then belonging to the State should be leased to such responsible persons or corporations which might be disposed to take the same, for such a term of years as would enable the said persons or corporations which might be disposed to take the same for such a term of years as would enable the said persons or corporations to fully refit, repair, and complete the said works of internal improvement, so as to enable them to do a successful business; and although, as this defendant is informed and believes to be true, there were proposals of such a nature offered to the said State at or about the time of the passage of the said act of the legislature hereinbefore referred to, by responsible, efficient business men, there were other still more convincing reasons which influenced the passage of the said act of the said legislature hereinbefore referred to.

Foremost among these reasons was the settled conviction on the part of a large majority of the citizens of the State, that it was not only not the duty of a State to become engaged in carrying on works of internal improvement, but that by such a course of policy, profligacy and corruption in official stations would be greatly encouraged, and that the control of the said works of internal improvement would without doubt become an element in the strife for mastery between the two great political parties in the State, and thus work irreparable injury to its good government. This defendant further says, that a large portion, also, of the citizens of said State, at the time of the passage of the said act of the said legislature, were strongly in favor of any course of policy which might or would tend to discharge the then large debt hanging over said State, the interest of which had not only long remained unpaid, but the principal also was then fast maturing; and although it was supposed, that by giving up for a time, by a lease, the works of internal improvement to individuals or an incorporated company, and a resort to still greater taxation, the interest, and perhaps, eventually, the principal, of the said debt of the State might have been paid and discharged, yet the anxiety on the part of its citizens, coupled with the reasons heretofore enumerated, mainly induced the passage, by its representatives, of the act of the legislature heretofore referred to.

And this defendant further says, that it denies it was finally settled upon as a step dictated by the true policy or interest of the State to sell the said Central Railroad to some private and responsible company, simply to obtain from it an agreement to extend, improve, and complete, the same; but this defendant insists, that had the said agents of the said complainant, at the time of the passage of the said act of the said legislature, avowed their determination to extend and construct the

said Central Railroad upon the line as now established for the same, then the said act of the said legislature would never have become a law, as this defendant verily believes.

And this defendant further says, that the settled policy and design of the State of Michigan had been to extend and construct the said Central Railroad from Kalamazoo westwardly through the village of Paw Paw, and thence onward to the village of St. Joseph, on Lake Michigan, and that assurances at the time of the passage of the said act of the legislature were held out by the said agents of the said complainant that the said complainant would continue in the same course of policy, and thus the passage of the said act was procured.

And this defendant further answering denies, that the assurances and provisions contained in section five of said act were the chief inducements to the said complainant for the alleged purchase of the said Central Railroad, and even if such were the case this defendant submits that the said complainant could not acquire by purchase from the State of any such rights or privileges as is now set up and claimed to have been granted it by said section five. The said legislature who passed said act having no power to grant any assurances, rights, or privileges whatever, to any person or corporation, contrary to the policy established by the said State by its fundamental law, which the said complainant and its said agents then well knew, and which this defendant submits would be the effect of the construction claimed for said section five by said complainant.

And this defendant further answering denies, that it was either the interest or policy of said State of Michigan to give or grant to said complainant any assurances, guarantees, or provisions, to enable the said complainant to monopolize the carrying-trade of any portion thereof, nor could it have been either the interest or policy of said State to have adopted any law or course of policy by which the business, travel, or commerce thereof, should in any manner be impeded or deviated from its natural channel, whether the same should be in or out of the State, otherwise the said legislature could never have enacted the amendment to the charter of thes aid complainant, approved April 3d, 1848, wherein it was permitted the said complainant in fact and effect (and as it now does) to make the city of Chicago, in the State of Illinois, the western terminus of its said road instead of New Buffalo, in said State of Michigan, whereas had said amendment not been passed the said complainant would have, by its termination at New Buffalo, built up a town in said State, to wit, at said New Buffalo, instead of aiding to build up the said city of Chicago.

This defendant therefore submits, that it has not been at any time, nor is now, the policy or interest of the said State of Michigan to adopt the course which the said complainant alleges it has pursued, and this defendant also denies equally the facts alleged in said bill that said State has for any period, even the most brief, adopted or pursued any such course of policy as is alleged by said complainant in its said bill; nor will the said State, in the opinion of this defendant, at any time

hereafter adopt a course of policy at once so suicidal and subversive of the best interests of a large majority of its citizens.

And this defendant further answering says, that although the said complainant may have paid nominally to said State of Michigan the said sum of two millions of dollars, as alleged by it in its said bill, yet that nearly the whole of the same was paid in the depreciated currency and evidence of indebtedness of the State, and which did not cost the said complainant more than about seventy cents on the dollar, and that therefore the actual purchase price to said complainant of the said railroad, as alleged to have been sold by the State, could not have exceeded one million five hundred thousand dollars, and which sum was less than the actual value of the said road and its appurtenances at the time of the sale thereof, as alleged by said complainant. And this defendant submits to the judgment of this court, that even if said complainant had paid to the State for said railroad and charter, in fact as well as in name, said sum of two millions of dollars, that it would be more appropriate for the said complainant to apply to the legislature for relief than to come into this court to detail its grievances.

And this defendant further answering admits, that said section five of said first mentioned act does contain the provision as quoted in said complainant's bill. But this defendant also says that said section five contains other provisions concerning the same subject-matter, and that all of said provisions, when taken together, mean nothing more, in the opinion and belief of this defendant, than a provision to prevent the construction or maintenance of railroads running across the State, or nearly so, and terminating at the eastern or southern boundary thereof, and running parallel, or nearly so, with the said road of said complainant within the distance of said section prohibited.

And this defendant further answering admits, that the said complainant does pay to the said State of Michigan an annual tax, which is in common with this defendant, and with the large mass of citizens and corporations in said State, but the amount of said tax this defendant does not know, and cannot state, and therefore leaves the said complainant to make proof thereof as it may be advised.

And this defendant further answering says, that for the reasons heretofore alleged by this defendant in this its said answer, the said State of Michigan, at the time of the passage of the said act of the legislature herein before first mentioned, determined also to sell the Southern Railroad; and that, in pursuance of such determination, the legislature of said State passed an act which was approved May 9th, 1846, and which was entitled "An act to authorize the sale of the Southern Railroad, and to incorporate the Michigan Southern Railroad Company," section thirty-eight of which said last mentioned act did contain the provision as alleged in said complainants' bill, and section six thereof did also contain the provision as alleged in said bill; and further, that in pursuance thereof the said Southern Railroad was sold to, and purchased by, this defendant, for the said sum of five hundred thousand dollars, and that this defendant has entered into possession of the said

road last mentioned, and its privileges and appurtenances, as in said last mentioned act described.

This defendant further answering denies, that at the time of the passage of the said act last referred to, the Jacksonburg and Palmyra Railroad Company had no legal existence; but this defendant insists that only so much of the railroad of said company as had been mortgaged to the State of Michigan had passed to said State at that time, and that the franchises and privileges of said last named corporation, in respect to that portion of its line not then completed and not mortgaged to the said State, were then and now are perfect—no judicial proceedings having been at any time instituted to declare them forfeited, and they not having been voluntarily surrendered by said last named company.

And this defendant further answering says, that before the expiration of the said three years, within which time this defendant was by the terms of its charter required to construct said Tecumseh Branch north from the village of Tecumseh to the village of Jackson, an act of the legislature of the State of Michigan, entitled "An act to authorize the Michigan Southern Railroad Company to repair their railroad with heavy rails, and for other purposes," approved March 31st, 1849, was passed, by which the time for completing the said Tecumseh Branch to Clinton, in the county of Lenawee, and from thence to Jackson, in the county of Jackson, was thereby extended for three years from the time when the same was required to be completed in the original act incorporating this defendant, which said act last mentioned received the assent of this defendant, in the manner required to give effect to the same.

And this defendant further answering says, that by reason of the large outlay of money required to complete and bring into operation the western portion of its said road, within the time required by its charter, and also to relay such portions of the said road as was by said charter required to be relaid, and at the same time to keep and maintain upon said road a sufficient number of cars, engines, and operatives, and to build the necessary buildings upon its said main line of road, so as to be able to perform the continually increasing amount of business along said line with satisfaction to the business and traveling community, this deponent, although intending to do so at the earliest practicable period, was not able actually to commence, construct, or finish, any portion of said Branch railroad westward from the village of Tecumseh to the village of Jackson, within the six years, as contemplated by the said act of the legislature of Michigan herein before referred to. But this defendant further answering says, that a regular meeting of its board of directors was holden pursuant to adjournment, at the office of this defendant, in the city of New York, in the State of New York, on the twenty-sixth day of April, 1852, at ten o'clock in the forenoon of said day; that at said meeting there were, among others, two certain resolutions adopted unanimously by said board, and which resolutions were and are in the words following, to wit:

"Resolved, That for the purpose of extending, constructing, and completing the Tecumseh Branch, as provided in the sixth section of the charter of this company, books of subscription to the stock of the company to the amount of three hundred thousand dollars be opened at the office of the company, in the city of New York, on the tenth day of May next, at nine o'clock a. m., and that the said books be closed as soon as that amount subscribed thereto by responsible parties.

"Resolved, That the chief engineer be instructed to cause the line of the Tecumseh Branch, and its extension to Jackson, be surveyed, and a report and maps thereof made to the board as soon as convenient, consistently with other business upon the road.

And this defendant further answering says, that on said tenth day of May, at the time and place appointed in said first named resolution, the said books of subscription were opened by these defendants, by its said board of directors, and in pursuance of said resolution, and thereupon was subscribed by responsible persons the said sum of three hundred thousand dollars, and which said sum has been paid in or secured to this defendant.

And this defendant further answering says, that the said subscriptions to the capital stock of this defendant having been so made and paid in as aforesaid, and in accordance with the sixth section of the act of the legislature incorporating this defendant, and the same having been fully complied with in all respects whatever, this defendant has proceeded to construct the said Tecumseh Branch north from Tecumseh towards the village of Jackson, without any unnecessary delay, and as required by its said charter; and this defendant intends to construct and complete the same at as early a day as possible, so as to furnish facilities for the business along the line thereof, now seeking an outlet to market; and this defendant claims that it has a legal and valid right to so construct and complete the same from said Tecumseh northward, as aforesaid, had the said stock for said branch road not been subscribed, unless restrained by the State; the said complainant having no authority to question that right.

And this defendant further answering says, that although the purchase price of the road of this defendant, as purchased by it of the said State, was less than the sum agreed to be paid by the said complainant for the said Central Railroad, yet at that time both prices were deemed by the State to be a fair valuation respectively of said roads, taking into consideration the greater length of the said Central Railroad, the larger city at the eastern terminus thereof, and the more thickly inhabited country along its line, and that the sale of the said Southern road was subordinate to the sale of the said Central road only in this, that notwithstanding the said State of Michigan had determined, as herein before stated, to sell and dispose of all its works of internal improvements, at the earliest possible period, yet that the State had also come to the determination not to sell one of said roads unless the other was sold at the same time.

And this defendant further answering says, that all the privileges, special rights and protections contained in the charter of the said complainant, are substantially embraced in the charter of this defendant, excepting so far as such privileges, special rights or protections, may be circumscribed, by the not inserting in this defendant's charter a section similar to and of like import with section ten of the said charter of the said complainant; and although this defendant admits that a section similar to said section ten was reported originally to the legislature, as forming a part of the charter of this defendant, yet this defendant says that said section was stricken out at the request of persons residing in the city of Monroe, in said State, and which request was then and there acceded to by the persons who were then in attendance upon said legislature, seeking to obtain from it the act of incorporation of this defendant.

And this defendant further answering admits, that by an act of the legislature of the State of Michigan, entitled An act to incorporate the Erie and Kalamazoo Railroad Company, approved April 22d, 1853, the said Erie and Kalamazoo Railroad Company were granted power to construct a railroad, with a single or double track, from Port Lawrence, (now Toledo,) through or as near as practicable to the village of Adrian, and thence on the most eligible route to such point on the Kalamazoo river as they might deem proper and needful.

And this defendant further answering says, that it is uninformed, save by complainant's said bill, whether the said Erie and Kalamazoo Railroad Company were, previous to the year 1846 or at any other time, insolvent, or whether the said company owed any sums of money to the laborers or mechanics who constructed the road of said company, or to any other persons, which were not or could not have been paid on demand; or whether any judgments had been obtained against said company which would not have been paid on demand, or which could not have been collected out of the corporate property of said company; but this defendant admits, that certain proceedings, by quo warranto or otherwise, were commenced in the supreme court of the said State of Michigan, for the purpose of having the charter of the said company declared forfeited; but this defendant says, that said proceedings, as this defendant is informed and believes, were afterwards discontinued by the attorney general of said State, and that no further action has been had thereon; and this defendant says, that the said Erie and Kalamazoo Railroad Company is now entirely solvent, and ready and able to pay any and all legal claims against said company, and that said company does now, and has for the space of six years last past, as this defendant is informed and verily believes, complied in all respects with its act of incorporation and the conditions of its charter.

And this defendant further answering says, that it admits there was passed by the legislature of the said State of Michigan, and approved May 18th, 1846, an act entitled "An act in regard to the Erie and Kalamazoo Railroad Company," but this defendant denies that the said act last mentioned was accepted by any person or persons, or corporation,

authorized to accept the same. And this defendant therefore insists, that the said act has no binding force or effect whatever upon the said Erié and Kalamazoo Railroad Company, as at present organized.

And this defendant further answering denies, that on the passage of the act of the legislature last herein before referred to, it was intended by said legislature to prohibit the construction of any railroad from the southern boundary of the State of Michigan, up to or across the line of the road of the said complainant for its benefit, but they insist, that said act last named was so passed principally for the purpose of protecting this defendant from the competition of a rival line of railroad from the village of Adrian to the village of Jackson.

And this defendant further says, that there were at the time of the passage of the act incorporating the said complainant, and have also been passed since that time, charters for railroads, running from the eastern and southern boundary of the State up to and beyond the line of the road of the said complainant, other than the charter of the Erie and Kalamazoo Railroad Company.

And this defendant further answering admits, that its cars do run regularly and continuously over and upon that part of the Erie and Kalamazoo Railroad which lies between the village of Adrian and Toledo aforesaid, and that said cars are run in connection with those upon the road of this defendant; all of which this defendant claims it has a valid and legal right to permit and authorize, so long as the said Erie and Kalamazoo Railroad Company shall consent thereto. And this defendant admits, that a portion of the travel and commerce of its said road passes over and upon said Erie and Kalamazoo Railroad, but how much, or what exact portion thereof, this defendant is now uninformed and cannot state.

And this defendant further answering says, that the interests of the traveling public, as well as the business community, require that there should be as few changes of cars as possible upon long lines of roads; that if it should be required, upon the arrival at the boundary line of a State of any train of cars, that the passengers should transfer themselves and their baggage to another train of cars, the annoyance and delay occasioned thereby, as well as by the transhipment of produce thereon, would greatly prevent intercommunication between different portions of the country, and render nearly unavailable the continually increasing facilities for rapid communication by railroad over the vast extent of territory of the United States. And this defendant further answering denies, that the said city of Toledo is, either in fact or name, a terminus of its said road; but this defendant insists, that the eastern terminus of its said road is at the city of Monroe, in the county of Monroe, and said State of Michigan.

And this defendant further answering denies, upon information and belief, that prior to the year 1846, or at any other time, the then commissioners of internal improvement of the State of Michigan, either as individuals or in their public or official capacity, or as agents of or

in behalf of said State, caused any portion of the track of said Erie and Kalamazoo Railroad Company to be torn up or destroyed without the express consent of said company; and this defendant submits, that had the said commissioners so acted, they would have been liable to have been proceeded against criminally therefor; and further, that the said State of Michigan has never encouraged, through its officers or otherwise, any course of policy which would result in or sanction the violation of any law of the State, how much soever the said policy might meet the approbation of the said complainant or its agents.

And this defendant further answering says, that it has not at any time, either by its officers, agents, or in any other manner, advertised for any loan of any sum of money whatsoever, for the purpose of constructing the said Tecumseh branch northward to the village of Jackson, but that it has commenced the construction of said branch, and intends to complete the same, as authorized and demanded by the provisions of its said charter and the laws of the State.

And this defendant further answering admits, that it has already located the intended track of the said extension of the said Tecumseh Branch to the said village of Jackson, and has, by its engineers, issued proposals for contracts for grading the same; and has also, by its engineers, let the contract for the said grading, but to what person or persons this defendant does not now know and is uninformed, save by *save by* the said complainant's bill of complaint; and this defendant expects and requires, that the said contractors, whomsoever the same may be, *he* shall perform the said contract according to the terms thereof.

And this defendant further answering admits, that it has commenced acquiring rights of way for the said Tecumseh Branch, and that it has nearly, if not entirely, acquired the same up to the eastern boundary line of the county of Jackson, in said State, and that it intends to procure the right of way along the whole distance of said line, as rapidly as the force *of* its command will permit, unless restrained by the order of this honorable court.

And this defendant further answering admits, that for the space of about ten miles from the village of Jackson, the projected line of its said intended extension of said Tecumseh Branch runs in a northwesterly direction towards the village of Jackson, and is for the said distance of ten miles within five miles of the present line of the said railroad of the said complainant; and this defendant says that the said contemplated extension of the Tecumseh Branch road does not approach within five miles of the line of said road of said complainant elsewhere than in the said county of Jackson; and this defendant further answering says, that the line of the railroad from the village of Tecumseh northward to the village of Jackson, formerly established and laid out by the Jacksonburg and Palmyra Railroad Company, passed through the village of Michigan Centre, in said county of Jackson, which last-named village is about five miles in an easterly direction from said village of Jackson; and for nearly the whole distance from thence to said village of Jackson, the said line of said Jackson-

burg and Palmyra Railroad was established and laid upon the land which is now occupied by the track of the railroad of the said complainant; and this defendant further answering denies, that by the extension of the said Tecumseh Branch Railroad from the village of Tecumseh to the village of Jackson, together with that portion of the Erie and Kalamazoo Railroad between Adrian and Toledo, and that portion of the main line of this defendant's road between the intersection of said Tecumseh Branch and the intersection of said Erie and Kalamazoo Railroad, there would or could be formed or constituted, either in fact or effect, one railroad, or a continuous line of railroads from Toledo, in the State of Ohio, to the said village of Jackson.

And this defendant further answering denies, that the Tecumseh Branch of its said road connects therewith at said village of Adrian, but that the same connects with its main line about five miles east of said village; and, by the switch there placed, the train of cars which might, or does, pass over the said Tecumseh Branch, would necessarily proceed in an easterly direction towards the city of Monroe—the eastern terminus of this defendant's said road—unless the said train should be backed up to said village of Adrian, over the distance of the said five miles, which will more fully appear by a map or plat of a portion of said Southern Railroad, said Tecumseh Branch, and said Erie and Kalamazoo Railroad, hereto annexed, and which this defendant prays may be taken to be a part of this its answer to said complainant's bill of complaint.

And this defendant further answering says, that the Tecumseh Branch of its said road, when completed on the line now located for the same up to the said village of Jackson, will commence at its intersection with the main line of this defendant's said road about five miles distant from the said village of Adrian, and in an easterly direction therefrom; running thence in a northwesterly direction to the village of Jackson aforesaid; that, by its connection with this defendant's said main line of road, by means of a switch, it becomes, in effect, one line of road from the said city of Monroe to the said village of Jackson; and this defendant further says that the said Erie and Kalamazoo Railroad runs from the said city of Toledo, in the State of Ohio, to the said village of Adrian, also in a northwesterly direction, and is connected with the said railroad of this defendant at the said village of Adrian, by means of a switch, whereby a train of cars, coming from said Toledo, would continue on the said road of this defendant, in a westerly direction towards the western terminus thereof; and that, in order to place the cars of the said Erie and Kalamazoo Railroad upon the said Tecumseh Branch of this defendant, it would be necessary that they should be backed along this defendant's main line of road eastwardly from said village of Adrian to the junction of this defendant's main line with said Tecumseh Branch Road, the said distance of about five miles.

And this defendant further says, that although the said Erie and Kalamazoo Railroad and the said Tecumseh Branch road runs in a

northwest and southeasterly direction, yet that the courses of the said railroads are nearly parallel with each other, and separate the one from the other, at about an average distance of from five to eight miles.

And this defendant says that it would require an entire change of route of the said Tecumseh Branch road, for the distance of at least ten miles, and a very large expenditure of money, so to construct the same as to terminate at the village of Adrian, and there connect with the said Erie and Kalamazoo Railroad, so as to form one continuous line of railroad from the southern boundary of the State of Michigan to the village of Tecumseh, and which this defendant has not at any time intended to do; nor has this defendant at any time given out or threatened so to connect the said Tecumseh Branch Railroad with the said Erie and Kalamazoo Railroad, so as to form, either in fact or effect, one railroad or a continuous line of railroad from said Tecumseh, or from said Jackson, either to Toledo, in the State of Ohio, or to the southern boundary of the State of Michigan.

And this defendant, therefore, further answering denies, that the said Tecumseh Branch Railroad, when extended to Jackson, as contemplated by this defendant, will, with the said Erie and Kalamazoo Railroad, and that portion of the main line of this defendant's road between the intersection of the said Tecumseh Branch and the intersection of said Erie and Kalamazoo Railroad, form, either in fact or effect, one railroad, or a continuous line of railroads from Toledo, in the State of Ohio, to Jackson, or railroad or railroads running from the southern boundary of the State of Michigan westwardly of the county of Wayne, to within five miles of the line of the said railroad of the said complainant, or that the said Tecumseh Branch road and the said Erie and Kalamazoo Railroad would, together, form a continuous line of roads, which could be operated together as one railroad; and this defendant submits that the extension of the said Tecumseh Branch Railroad to the village of Jackson is no violation of the rights, privileges, or guarantees secured to the said complainant by its said charter.

And this defendant further answering denies, that the extension of the said Tecumseh Branch Railroad of this defendant, from the said village of Tecumseh to the said village of Jackson, will, either in fact or effect, form one railroad, or a continuous line of railroads, from the eastern boundary of the said State of Michigan, which westward of, or running westwardly of Wayne county, in said State, will approach within five miles of the said road of said complainant; nor will the said contemplated extension of the said Tecumseh Branch Railroad be, either in fact or effect, a continuation or extension of the said Erie and Kalamazoo road beyond the village of Adrian towards the Kalamazoo river.

And this defendant further answering says, that it admits that the said complainant has never given its consent to the construction of the said contemplated railroad from Tecumseh to Jackson, or of any part thereof; and this defendant submits, that the opposition of the said complainant to the construction of the said contemplated road arises

from the apprehension, on its part, that the construction of said road would tend to break down the monopoly of the carrying-trade for all the central and the greater part of northern Michigan, which the said complainant now enjoys, and would furnish facilities for intercommunication between various parts of the State, and also cheaper, speedier, and better outlets to market than any which can be furnished by the said complainant; all of which advantage to be gained by the constructing the said road, this defendant believes, and therefore submits, has never been, and it verily trusts will never be, the policy of the said State of Michigan to prevent or in any manner retard.

And this defendant further answering denies, that it has at any time given out or reported that it did furnish*ed*, had furnished, or would furnish the requisite moneys to third persons to purchase or procure the right of way or fee of the land for the track or use of the said contemplated railroad, to be held by said third persons, or any others who might or would hold, or permit the same to be used for the track or uses of the said contemplated road; but this defendant has at all times avowed its determination to build the said branch road, under and in conformity with the provisions of its charter, believing, as it does, that it is required so to do by the provisions of said charter, and that there is sufficient power conferred therein for this defendant to proceed and complete the same, without the necessity of seeking the consent of the said complainant. But this defendant further answering says, that it has not at any time avowed its intention of building, constructing or maintaining, or attempted to build, construct or maintain the said Tecumseh Branch to the village of Jackson, without making full and ample compensation to any person or corporation, for any and all damages or injury which might accrue to him or them thereby; and this defendant submits to this court, that in case it shall appear to said court that any of the rights, privileges, immunities, or franchises of the said complainant, as secured to it by its said charter, shall be injured by said extension of said Tecumseh Branch to Jackson, that this defendant be allowed to proceed to condemn said rights, privileges, immunities and franchises, or any of them, as permitted by the provisions of its act of incorporation. And this defendant further submits, that this court has no jurisdiction whatever over the person of this defendant in this suit; nor has the said court any right or authority in any manner to interfere to take cognizance of the subject-matter of this suit, instituted by the filing of the said complainant's bill of complaint.

And this defendant submits to this honorable court, that in respect to all and every of the matters in the said complainant's bill mentioned *mentioned* and complained of, as the same are set forth in said bill, the said complainant is not entitled to any relief from a court of equity; and this defendant hopes it shall have the same benefit of this defence as if it had demurred to the said complainant's bill.

And this defendant denies all unlawful combination and conspiracy in the said bill charged, without this, that any other matter or thing, material or necessary for this defendant to make answer unto, and not

herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready to aver, maintain and prove, as this court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

JOHN B. JERVIS,
Pres't M. Sou. R. R. Co.
By HIGBY & FOOTE, *Sol's for Co.*
P. M. HOPKINS,
Sec'y M. S. R. R. Co.
By HIGBY & FOOTE, *Sols. for Co.*
HIGBY & FOOTE,
Sol'rs for Mich. Sou. Railroad Co., and of Counsel.

[*For plat see original, page* 134.]

Afterwards, to wit, on the 27th day of December, one thousand eight hundred and fifty-three, the joint and several answers of John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton and Guy Foote, to the amended bill of complaint, was filed in the office of the register of said court, which answer is in the words and figures following, to wit:

STATE OF MICHIGAN,
Circuit Court for the county of Wayne, in Chancery.

The joint and several answers of John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton and Guy Foote, defendants to the amended bill of complaint of the Michigan Central Railroad Company, and against these defendants, and the Michigan Southern Railroad Company, defendants.

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much thereof as these defendants are advised is material for them to make answer unto, they answering say:

That they admit that the said complainant was constituted a body corporate and politic, by the name and style of the Michigan Central Railroad Company, with perpetual succession, in virtue of the provisions of a certain act of the legislature of the State of Michigan, entitled "An act to authorize the sale of the Central Railroad and to incorporate the Michigan Central Railroad Company," approved on the

twenty-eighth day of March, A. D. 1846, wherein it was declared, that in said corporate name the complainant might have and exercise all the powers, rights, privileges and immunities which were or might be necessary to carry into effect the purposes and objects of the said act, as the same were therein set forth; and that within the time limited by the second section of said act, the said complainant accepted the same, and the charter granted to it thereby, and did pay at the State treasury, to the said State of Michigan, the sum of five hundred thousand dollars; but whether the said State of Michigan sold, granted, and conveyed all the right, title, and interest of said State in and to said Central Railroad, and all its appurtenances, as particularly mentioned in said second section, for the sum of two millions of dollars, and whether the said two millions of dollars was ever fully paid by said complainant to said State, or at the time, in the manner, and in accordance with the provisions of said act, these defendants do not know and cannot state, and therefore leave the said complainant to make such proof thereof as it may be advised.

And these defendants further answering say, that they admit that the said complainant was put in possession of some portion of said Central Railroad, but how much thereof, and whether upon the conveyance and payment alleged in said complainant's bill, all or any of the right, title, or interest of the said State of Michigan, of, in or to the said Central Railroad, or its appurtenances, or other mentioned in said act, became then or thereafter vested in, or became the property of the said complainant, these defendants do not know and cannot state, and therefore leave the said complainant to make such proof thereof as it may be advised.

And these defendants admit, that ever since the incorporation of the said complainant, a board of directors has annually been elected, and that one of said board has uniformly been elected president; and that the first set of directors in said act named, opened books to receive subscriptions to the capital stock of the said complainant; and that at the time and place of opening the said books, the sum of two millions of dollars was subscribed to the capital stock of the said complainant.

And these defendants further answering admit, that the said complainant constructed, completed, and put in operation a railroad from the city of Detroit to Lake Michigan, and at a point on the southern boundary line of said State, for the transportation of property and passengers, and that the same is now and has ever since its completion been in operation, and that said railroad runs through the village of Jackson, in said State; but whether the said railroad was so constructed, completed, and put in operation within the time limited by said act, and whether the complainant has complied with all the provisions or requirements of said act, these defendants do not know and cannot state, and therefore leave the said complainant to make such proof thereof as it may be advised.

And these defendants further admit, that the chief and permanent place of business of the said complainant within the State of Michigan

is in the city of Detroit, in said county of Wayne, and that some of its chief offices and active establishments are in said city, and that said city is the residence of some of its principal and active officers, and where is transacted, within the State of Michigan, the principal of its affairs.

And these defendants further answering admit, that anterior to the time of the alleged sale of the said Central Railroad to the said complainant, the said State of Michigan had, in prosecution of its internal improvement system, partly laid out and constructed three separate and independent railroads, running through the said State, parallel or nearly so to each other, of which that alleged to be purchased by the said complainant was one, and that purchased by the Michigan Southern Railroad Company was another; and that up to the time of the purchase of one by said Michigan Southern Railroad Company and the alleged purchase of the other by the said complainant, both of said railroads were owned, managed, and controlled by the said State of Michigan.

And these defendants further answering submit, that they are not bound to answer the allegations in said complainant's bill, as to what has been or is the policy of the said State, or what might have actuated it in making the alleged sale of the said Central Railroad to the said complainant, except so far as the same may appear from its said charter.

And these defendants further answering admit, that said section five of the act entitled "An act to authorize the sale of the Michigan Central Railroad and to incorporate the Michigan Central Railroad Company," approved March 28, 1846, does contain the provision as quoted in said complainant's bill of complaint; and, further, that the said complainant does pay to the State of Michigan an annual tax, but the amount thereof these defendants do not know, and cannot state, and therefore leave the said complainant to make proof thereof if it be so advised.

And these defendants further answering say, that there was passed by the legislature of the State of Michigan an act entitled "An act to authorize the sale of the Southern Railroad, and to incorporate the Michigan Southern Railroad Company," approved May 9, 1846; section thirty-eight of which said last mentioned act did contain the provision as alleged in said complainant's bill, and section six thereof did contain the provision as alleged in said bill; and, further, that in pursuance thereof the said Southern Railroad was sold to and purchased by the said Michigan Southern Railroad Company, for the sum of five hundred thousand dollars, and that the said Michigan Southern Railroad Company has entered into possession of the said Southern Railroad and its privileges and appurtenances as in its last mentioned act described.

And these defendants further answering say, that before the expiration of the said three years, within which time the said Michigan Southern Railroad Company was, by the terms of its charter, required to

construct said Tecumseh Branch north from the village of Tecumseh to the village of Jackson, an act of the legislature of the said State of Michigan entitled "An act to authorize the Michigan Southern Railroad Company to repair their roads with heavy rails, and for other purposes," approved March 31, 1849, was passed, by which the time for completing the said Tecumseh Branch to Clinton, in the county of Lenawee, and from thence to Jackson, in the county of Jackson, was thereby extended for three years from the time when the same was required to be completed in the original act incorporating the said Michigan Southern Railroad Company, which said act last mentioned received the assent of the said Michigan Southern Railroad Company in the manner required to give effect to the same.

And these defendants further answering say, that by reason of the large outlay of money required to complete and bring into operation the western portion of the said Michigan Southern Railroad within the time required by the charter of the said Michigan Southern Railroad Company, and also to relay such portions of the said road as were by said charter required to be relaid, and at the same time to keep and maintain upon said road a sufficient number of cars, and engines, and operatives, and to build the necessary buildings upon the main line of said road, as to be able to perform the continually increasing amount of business along said line with satisfaction to the business and traveling community, the said Michigan Southern Railroad Company, although intending so to do at the earliest practicable period, was not able actually to commence, construct, or finish any portion of said Tecumseh Branch Railroad, from the village of Tecumseh, northward, to the village of Jackson, within the six years, as contemplated by the said acts of the legislature of the State of Michigan hereinbefore referred to.

And these defendants further answering say, that a regular meeting of the board of directors of the said Michigan Southern Railroad Company was holden pursuant to adjournment, at the office of said last named company, in the city of New York, in the State of New York, on the twenty-sixth day of April, in the year one thousand eight hundred and fifty-two, at ten o'clock in the forenoon of said day; that at said meeting were present a majority of the whole number elected of said board of directors, and that at said meeting there were among others two certain resolutions adopted unanimously by said board, and which resolutions were and are in the words following, to wit:

"Resolved, That for the purpose of extending, constructing, and completing the Tecumseh Branch, as provided in the sixth section of the charter of the company, books of subscription to the stock of the company to the amount of three hundred thousand dollars be opened at the office of the company, in the city of New York, on the tenth day of May next, at nine o'clock a. m., and that the said books be closed as soon as that amount shall be subscribed by responsible parties.

"Resolved, That the chief engineer be instructed to cause the line of the Tecumseh Branch, and its extension to Jackson, to be surveyed,

and a report and maps thereof made to the board as soon as convenient, with other business upon the road."

And these defendants further answering say, that on said tenth day of May, at the time and place appointed in said first named resolution, the said books of subscription were opened by the said Michigan Southern Railroad Company, by its said board of directors, in pursuance of said resolution, and that thereupon was subscribed, by responsible persons, the said sum of three hundred thousand dollars, and which said sum has been duly paid into said Michigan Southern Railroad Company.

And these defendants further answering say, that the said subscription to the capital stock of the said Michigan Southern Railroad Company having been so made, and paid in as aforesaid, and in accordance with the sixth section of the act of the legislature incorporating said company, and the same having been fully complied with in all respects whatever, the said Michigan Southern Railroad Company has proceeded to construct the said Tecumseh Branch northward from Tecumseh toward the village of Jackson, without any unnecessary delay, and as required by its said charter; and these defendants are informed and believe, that the said Michigan Southern Railroad Company intends to construct and complete the same at as early a day as possible, and these defendants intend also to assist in such construction so far forth as such assistance may be required.

And these defendants further answering admit, that by an act of the legislature of the State of Michigan, entitled "An act to incorporate the Erie and Kalamazoo Railroad Company," approved April 22, 1833, the said Erie and Kalamazoo Railroad Company were granted power to construct a railroad, with a single or double track, from Port Lawrence (now Toledo) through, or as near as practicable, to the village of Adrian, and thence on the most eligible route to such point on the Kalamazoo river as they might deem proper and needful.

And these defendants further answering say, that they are uninformed, save by complainant's said bill, whether the said Erie and Kalamazoo Railroad Company were, previous to the year one thousand eight hundred and forty-six, or at any other time, insolvent; or whether the said company owed any sums of money to the laborers or mechanics who constructed the road of said company, or to any other persons, which were not or could not have been paid on demand; or whether any judgments had been obtained against said company which would not have been paid on demand, or which could not have been collected out of the corporate property of said company. But these defendants admit, that certain proceedings, by quo warranto or otherwise, were commenced in the supreme court of the said State of Michigan, for the purpose of having the charter of said company declared forfeited; but these defendants say, that said proceedings, as they are informed and believe, were afterwards discontinued by the attorney general of said State, and that no further action has been had thereon; and these defendants say, that the said Erie and Kalamazoo Railroad

Company is now entirely solvent, and ready and able to pay any and all legal claims against said company, and that said company does now, and has for the space of six years last past, as these defendants verily believe, complied in all respects with its act of incorporation and the conditions of its charter.

And these defendants further answering say, that they admit there was passed by the legislature of the said State of Michigan, and approved on the eighteenth day of May, in the year one thousand eight hundred and forty-six, an act entitled "An act in regard to the Erie and Kalamazoo Railroad Company;" but these defendants deny that the said act last mentioned was accepted by any person or persons, or corporation authorized to accept the same; and these defendants, therefore, insist that the said act has no binding, force or effect whatever upon the said Erie or Kalamazoo Railroad Company, as at present organized.

And these defendants further answering deny, that by the passage of the act of the legislature lastly hereinbefore referred to, it was intended by said legislation to prohibit the construction of any railroad from the southern boundary of the State of Michigan up to or across the line of the road of the said complainant, but they insist that said act last named was so passed, in part, for the purpose of protecting the said Michigan Southern Railroad Company from competition of a rival line of railroad from the village of Adrian to the village of Jackson.

And these defendants further say, that there were, at the time of the passage of the act incorporating the said complainant, and have also been passed since that time, charters for railroads running from the eastern and southern boundary of the State up to and beyond the line of the road of the said complainant, other than the charter of the Erie and Kalamazoo Railroad Company.

And these defendants further answering admit, that the cars of the said Michigan Southern Railroad Company do run regularly and continuously over and upon that part of the Erie and Kalamazoo Railroad which lies between Adrian and Toledo, aforesaid; and that said cars are run in connection with those upon the Michigan Southern Railroad, all of which, these defendants insist, the said Michigan and Southern Railroad Company has a valid and legal right to permit and authorize, so long as the said Erie and Kalamazoo Railroad Company shall consent thereto.

And these defendants admit, that during the closing of navigation on Lake Erie, the largest portion of the travel and commerce of the said Michigan Southern Railroad passes over and upon said Erie and Kalamazoo Railroad, but what exact portion thereof these defendants do not know and cannot state.

And these defendants deny, that the said city of Toledo is, either in fact or in name, a terminus of the Michigan Southern Railroad; but they say that the eastern terminus of said railroad is at the city of Monroe, in the county of Monroe, and said State of Michigan.

And these defendants further answering admit, that the said Michigan Southern Railroad Company has already located the intended

track of the said extension of the said Tecumseh Branch to the said village of Jackson, and has, by its engineers and agents, issued proposals for grading and completing the same; and has also, by its said engineers, let the contract for the said grading to the defendant, Thomas G. Davis, and others; and these defendants expect and intend to cooperate with the said Michigan Southern Railroad Company in the grading, building and completing the said Tecumseh Branch, whenever their services may be required by said company.

And these defendants further answering say, that is true that the said Michigan Southern Railroad Company has commenced acquiring rights of way for the said Tecumseh Branch Railroad, and that it has nearly, if not entirely, acquired such rights of way up to said village of Jackson, and that the same have been procured by the aid and assistance of these defendants; and that these defendants expect and intend to aid and assist still further in procuring said rights of way, until the same shall have been wholly obtained from said village of Tecumseh to the said village of Jackson.

And these defendants further answering say, that for the space of about ten miles from the village of Jackson, the projected line of the said intended extension of said Tecumseh Branch runs in a northerly direction towards the village of Jackson; and for the said distance of ten miles within five miles of the present line of the said railroad of the said complainant; and these defendants also say, that the said contemplated extension of the Tecumseh Branch Road does not approach within five miles of the line of said railroad of said complainant, elsewhere than in the said county of Jackson.

And these defendants further say, that the line of the railroad from the village of Tecumseh northward to the village of Jackson, formerly established and laid out by the Jacksonburg and Palmyra Railroad Company, passed through the village of Michigan Centre, in said county of Jackson, (which last-named village is about five miles in an easterly direction from said village of Jackson,) and for nearly the whole distance from thence to said village of Jackson. The said line of said Jacksonburg and Palmyra Railroad was established and laid out upon the land which is now occupied by the track of the railroad of the said complainant.

And these defendants further answering deny, that by the extension of the said Tecumseh Branch Railroad from the village of Tecumseh to the village of Jackson, together with that portion of the Erie and Kalamazoo Railroad between Adrian and Toledo, and that portion of the main line of the Michigan Southern Railroad between the intersection of said Tecumseh Branch, and the intersection of the said Erie and Kalamazoo Railroad, there would, or could, be formed or constituted, either in fact or effect, one railroad, or a continuous line of railroads, from Toledo, in the State of Ohio, to the said village of Jackson.

And these defendants further answering deny, that the Tecumseh Branch of the Michigan Southern Railroad connects therewith at the said village of Adrian, but that the same connects with the main line

of said railroad about five miles east of said village, and by the switch there placed the train of cars which might, or does, pass over the said Tecumseh Branch would necessarily proceed in an easterly direction towards the said city of Monroe, the eastern terminus of the said Southern Railroad, unless the said train should be backed up to said village of Adrian, over the distance of said five miles, which will more fully appear by a map or plat of a portion of the said Tecumseh Branch, the said Southern Railroad, and the said Erie and Kalamazoo Railroad hereto annexed, and which these defendants pray may be taken to be a part of their answer to said complainant's bill of complaint.

And these defendants further answering say, that the Tecumseh Branch of the said Southern Railroad, when completed on the line now located for the same up to the village of Jackson aforesaid, will commence at its intersection with the main line of said Southern Railroad, about five miles distant from said village of Adrian, and in an easterly direction therefrom, and run thence in a northwesterly direction to the village of Jackson aforesaid, that by its intersection with said main line of said Southern Railroad, by means of a switch, it becomes, in effect, one line of railroad from the said city of Monroe to the said village of Jackson.

And these defendants further say, that the said Erie and Kalamazoo Railroad runs from the said city of Toledo, in the State of Ohio, to the said village of Adrian, also in a northwesterly direction, and is connected with the said Southern Railroad at the said village of Adrian by means of a switch, whereby a train of cars coming from said Toledo would continue on the said Southern Railroad in a westerly direction towards the western terminus thereof, and that in order to place the cars of the said Erie and Kalamazoo Railroad upon the said Tecumseh Branch, it would be necessary that they should be backed along the main line of said Southern Railroad, eastwardly from said village of Adrian, to the junction of the said main line with the said Tecumseh Branch Railroad, the said distance of about five miles.

And these defendants further say, that although the said Erie and Kalamazoo Railroad, and the said Tecumseh Branch Railroad, run in a northwest and southeasterly direction, yet that the courses of the said railroads are nearly parallel with each other, and separated the one from the other at about an average distance of from five to eight miles.

And these defendants further say, that it would require an entire change of route of the said Tecumseh Branch Railroad for the distance of about ten miles, and a very large expenditure of money, so to construct the same as to terminate at the village of Adrian, and there connect with the said Erie and Kalamazoo Railroad, so as to form one continuous line of railroad from the southern boundary of the State of Michigan to the village of Tecumseh, which these defendants submit the said Michigan Southern Railroad Company has no power or authority to do under or by virtue of any law of said State.

And these defendants further answering deny, that the said Tecum-

seh Branch Railroad, when extended to the said village of Jackson upon the contemplated route thereof, will with the Erie and Kalamazoo Railroad aforesaid, and that portion of the main line of the Michigan Southern Railroad between the intersection of said Tecumseh Branch and the intersection of said Erie and Kalamazoo Railroad, form, either in fact or effect, one railroad, or a continuous line of railroads from Toledo, in the State of Ohio, to said village of Jackson, or a railroad or railroads running from the southern boundary of the State of Michigan westwardly of the said county of Wayne to within five miles of the line of the said railroad of the said complainant, or that the said Tecumseh branch road, and the said Erie and Kalamazoo Railroad, would together form a continuous line of roads which could be operated together as one railroad; and these defendants submit that the extension of the said Tecumseh Branch Railroad to the village of Jackson is no violation of the rights, privileges, or guarantees secured to the said complainant by its said charter.

And these defendants further answering deny, that the extension of the said Tecumseh Branch Railroad, from the said village of Tecumseh to the said village of Jackson, will either in fact or effect form one railroad, or a continuous line of railroads, from the eastern boundary of the State of Michigan, and which, running westwardly of Wayne county, in said State, will approach within five miles of the said road of the said complainant; nor will the said contemplated extension of the said Tecumseh Branch Railroad be, either in fact or effect, a continuation or extension of the said Erie and Kalamazoo Railroad beyond the village of Adrian towards the Kalamazoo river.

And these defendants further answering say, that they admit that the said complainant has never given its consent to the construction of the said contemplated extension of the said Tecumseh Branch Railroad to the said village of Jackson, or of any part thereof; and these defendants submit, that the opposition of the said complainant to the construction of the said contemplated Tecumseh Branch Railroad arises from the apprehension on its part that the construction of said road will tend to break down the monopoly of the carrying-trade for all the central, and the greater part of northern Michigan, which the said complainant now enjoys, and would furnish facilities for intercommunication between various parts of the State; and also cheaper, speedier, and better outlets to market than any which can be furnished by the said complainant—all of which advantages to be gained by the constructing the said Tecumseh Branch road these defendants believe, and therefore submit has never been, and they verily trust will never be, the policy of the said State of Michigan to prevent or in any manner retard.

And these defendants further answering submit, that this court has no right or authority, in any manner, to interfere to take cognizance of the subject-matter of this suit, instituted by the filing the said complainant's bill of complaint; and that in respect of all and any of the matters in the said bill mentioned or complained of, as the same are

set forth therein, the said complainant is not entitled to any relief from a court of equity, and these defendants hope that they shall have the same benefits of this defence as if they had demurred to the said complainant's bill of complaint.

And these defendants deny all unlawful combinations and conspiracy in the said bill charged; without this, that any other matter or thing material or necessary for these defendants to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of these defendants—all which matters and things these defendants are ready to aver, maintain, and prove, as this court shall direct, and humbly pray to be herein dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) JOHN B. JERVIS,
By Guy Foote, his Attorney.
ELISHA C. LITCHFIELD,
By Guy Foote, his Attorney.
THOMAS G. DAVIS,
By Guy Foote, his Attorney.
AMOS ROOT,
By Guy Foote, his Attorney.
MOSES A. McNAUGHTON,
By Guy Foote, his Attorney.
GUY FOOTE.

HIGBY & FOOTE,
Sol'ts for Defendants, and of Counsel.

STATE OF MICHIGAN,
County of Jackson, ss:

Guy Foote, of said county, being duly sworn says, that he is one of the defendants named in the foregoing answer; that deponent has read said answer; knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on the information or belief of the said defendants, and as to those matters he believes it to be true.

(Signed) GUY FOOTE.

Sworn and subscribed before me this 26th day of December, A. D. 1853.

W. K. GIBSON,
Notary Public, Jackson county, Mich.

Afterwards, to wit, on the thirteenth day of January, 1854, the replication of complainants to the answer of the Michigan Southern Railroad Company was filed in the office of the register of said court, which replication is in the words and figures following, to wit:

STATE OF MICHIGAN,
Circuit Court for the county of Wayne, in Chancery.

The Replication of the Michigan Central Railroad Company, complainant, to the answer of the Michigan Southern Railroad Company, defendants.

This repliant, saving and reserving unto itself all manner of advantage of exceptions to the manifold insufficiencies of the answer, for replication thereunto saith, that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by its said bill it hath already done.

VAN DYKE, FRASER & GRAY,
Solicitors for Complainants.

And afterwards, to wit, on the said thirteenth day of January, 1854, the replication of the Michigan Central Railroad Company to the several answers of John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton, and Guy Foote, was filed in the office of the register of said court, in the following words, to wit:

STATE OF MICHIGAN,
Circuit Court for the county of Wayne, in Chancery.

The replication of the Michigan Central Railroad Company to the answer of John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton, and Guy Foote, defendants.

This repliant, saving and reserving unto itself all and all manner of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

VAN DYKE, FRASER; & GRAY,
Solicitors for Complainant.

Afterwards, to wit, on the tenth day of February, one thousand eight hundred and fifty-four, the defendants, by their solicitors, filed in

the office of the register of said court a precipe for order to take testimony in this cause, which precipe is in the words and figures following, to wit:

Circuit Court for the county of Wayne, in Chancery.—February 10, 1854.

THE MICHIGAN CENTRAL RAILROAD COMPANY, complainant,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton, and Guy Foote, defendants.

In this cause neither party having claimed an intention of examining witnesses in open court, and more than ten days having elapsed since the filing of replications to the answers of the defendant, it is ordered, on motion of Higby & Foote, solicitors for the defendants, that the testimony of the witnesses in said cause be taken before a circuit court commissioner within sixty days from the service of notice of this order on the solicitors for the complainants.

Let the register please enter this order.

HIGBY & FOOTE,
Sol'ts for Def'ts.

To E. HAWLEY, Jr.,
Reg'r in Chancery, Wayne county.

In pursuance of the foregoing precipe, on the said tenth day of February, A. D. 1854, the order in the following words and figures was duly entered in the books of common rule kept by the register of said court in his office, viz:

In the Circuit Court for the county of Wayne, in Chancery.—February 10, 1854.

THE MICHIGAN CENTRAL RAILROAD COMPANY, complainant,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Guy Foote, Amos Root, and Moses A. McNaughton, defendants.

In this cause neither party having claimed an intention of examining witnesses in open court, and more than ten days having elapsed since the filing of replications to the answers of the defendants, it is ordered, on motion of Higby & Foote, solicitors for the defendants, that the testimony of the witnesses in said cause be taken before a circuit court

commissioner within sixty days from the service of notice of this order on the solicitors for the complainant.

HIGBY & FOOTE,
Sol'ts for Def'ts.

Entered by—

H. K. NOWLAND,
Deputy Register.

Afterwards, to wit, on the eleventh day of May, 1854, proof of service of notice of the foregoing order was filed in the office of the register of said court, in the words and figures following, to wit:

The Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton, Guy Foote.

STATE OF MICHIGAN, *County of Wayne, ss:*

Guy Foote, of the county of Jackson, in said State, being duly sworn, says that he is one of the solicitors for the defendants above named; that on the tenth day of February last past, an order was entered with the register of this court in behalf of said defendants for the taking of the testimony in the above entitled cause within sixty days from the service of notice of such order on the solicitors for the complainant, (neither party having claimed the right to examine witnesses in open court;) that on said tenth day of February last past defendant gave notice in writing of the entry of such order to William Gray, esquire, one of the solicitors for the complainants, by delivering the same to said Gray in person.

(Signed) GUY FOOTE.

Sworn and subscribed before me, this 11th day of May, 1854.

E. HAWLEY, Jr., *Register.*

And afterwards, to wit, on the 11th day of May, 1854, a precipe for order to close proof was filed by defendant's solicitors in the office of the register of said court, which precipe is in the words and figures following, to wit:

Circuit Court for the county of Wayne, in Chancery.—May 11, 1854.

THE MICHIGAN CENTRAL RAILROAD COMPANY,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton, and Guy Foote.

In this cause, on filing the affidavit of Guy Foote showing due service upon the solicitors of the complainant more than sixty days prior

to this date of notice of the entry of an order in said cause for the taking of testimony therein within sixty days from the service of notice of the entry of such order upon the solicitors for the complainants, it is therefore hereby ordered, on motion of Higby & Foote, solicitors for defendants, that the proofs in said cause be, and the same are hereby, closed.

Please enter the above order in the book of common orders.

HIGBY & FOOTE,

Dated May 11, 1854. *Defendant's Solicitors.*

To the REGISTER of the Circuit Court for the county of Wayne, in Chancery.

That afterwards, in pursuance of the foregoing precipe, an order was entered in the book of common orders, kept by the register of said court, in the following words and figures, to wit:

The Circuit Court for the county of Wayne, in Chancery.—May 11, 1854.

THE MICHIGAN CENTRAL RAILROAD COMPANY,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton, Guy Foote.

In this cause, on filing the affidavit of Guy Foote, showing due service upon the solicitors of the complainant, more than sixty days prior to this date of notice of the entry of an order in said cause for the taking of testimony therein within sixty days from the service of notice of the entry of such order upon the solicitors of the complainants, it is ordered, on motion of Higby & Foote, solicitors for defendants, that the proofs in said cause be, and the same are hereby, closed.

And afterwards, to wit, on the 12th day of May, one thousand eight hundred and fifty-four, the following notice, to place the above entitled cause upon the calendar for hearing at the May term of said court, A. D. 1854, was filed in the register's office of said court, viz:

Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, Elisha C. Litchfield, Jno. B. Jervis, Thomas G. Davis, Amos Root, Moses A. McNaughton, and Guy Foote.

This cause belongs to the fourth class, and is to be heard in plead-

ings and proofs, and is entitled to priority from the 12th day of January last past.

Dated Jackson, May 12, 1854.

HIGBY & FOOTE,
Solicitors for Defendants.

E. HAWLEY, Jr., Esq.,
Register of said Court, Detroit, Michigan.

And afterwards, to wit, on the thirteenth day of May, one thousand eight hundred and fifty-four, the deposition of Frederick Hubbard was filed in the office of the register of said court, which deposition is in the words following, viz:

THE MICHIGAN CENTRAL RAILROAD COMPANY,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, and others, defendants.

Circuit Court for the county of Wayne, in Chancery.

Deposition of Frederick Hubbard, a witness produced, sworn, and examined, in a certain cause depending and at issue in the circuit court for the county of Wayne, in chancery, wherein the Michigan Central Railroad Company is complainant, and the Michigan Southern Railroad Company and others are defendants, before me, Addison Mandell, a circuit court commissioner for the county of Wayne, on the twenty-eighth day of April, A. D. 1854, at the office of James A. Van Dyke, esq., in the city of Detroit, in said county, on the part of said defendants; at which examination I was attended by the said witness and by Guy Foote esq., solicitors for said defendants, and by Messrs. Van Dyke and Fraser on the part of the complainants. Such testimony was taken by consent of said parties by their respective solicitors.

Frederick Hubbard, a witness, produced on the part of the defendants, being duly sworn, says, that he is the chief engineer of the Jackson Branch Railroad, and resides upon the line of the work; was connected with the construction of the Michigan Central Railroad from the year 1837 to the year 1840; during which time the road was constructed from Detroit to Ann Arbor by the State. My particular charge of the construction of the road, was east of Ann Arbor, more definitely between there and Ypsilanti. Saw its construction between Ann Arbor and Dexter; was familiar with the details of the manner of construction while I was upon the road. The road between Detroit and Dexter was constructed with a wooden superstructure, with a flat bar rail. The road was built in the usual manner of construction of railroads at that time, and as substantially. We did not ballast the road; nor was it customary to ballast that kind of track throughout. It was only necessary to ballast with that kind of track where the ground was

swampy. Few such places occurred on the line of that road from Detroit to Dexter. We did not ballast them as we ballast now, at all.

(The foregoing testimony was objected to at the time the same was taken, and taken subject to objection.)

FREDERICK HUBBARD.

On cross-examination, witness states, that when he was engaged on the Michigan Central Railroad, he was assistant engineer, and Col. John M. Berrien was chief engineer. Witness left the State of Michigan in the year 1840, and was absent about nine years for the whole time.

FREDERICK HUBBARD.

I hereby certify that the above-named witness, Frederick Hubbard, appeared before me on the twenty-eighth day of April, A. D. 1854, and was by me duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition was committed to writing by me, in the presence of the witness signing the same, and by me carefully read over to him, and signed by him in my presence.

ADDISON MANDELL,

Circuit Court Commissioner, Wayne county, Michigan.

Commissioner's fees, $3 06.

And afterwards, to wit, on the thirteenth day of May, one thousand eight hundred and fifty-four, the complainant in this cause filed, in the office of the register of the said court, depositions, of which the following is a true copy, viz:

Depositions

Of witnesses produced, sworn and examined in a certain cause depending and at issue in the circuit court for the county of Wayne, in chancery, wherein the Michigan Central Railroad Company is complainant, and the Michigan Southern Railroad Company and others are defendants, on the days mentioned in the certificate at the close of the depositions, at the office of James A. Van Dyke, esq., in the city of Detroit, before me, a circuit court commissioner for the county of Wayne, on the part of said complainant, at which examination I was attended by Messrs. Van Dyke and Fraser on the part of the complainant, and by Guy Foote, esq., on the part of the defendants. Said testimony was taken in pursuance of the annexed stipulation, and by the consent of said solicitors, Van Dyke, Fraser and Foote.

Edwin Noyes, a witness produced and sworn on the part of the complainant, says, that he is the superintendent of the Michigan Central Railroad, and has been so since the month of October last.

The interrogatory as follows—Does he know where the chief place of business of the complainant is; where the headquarters of the complainant are; and where the home is of its chief acting officers?—objected to, and the answer taken subject to objection.

Answer. I do; it is in the city of Detroit, county of Wayne, and State of Michigan. Detroit is the home of its principal managing officers. The complainant has its local treasuries' offices here, where all its payments are made. The income and expense accounts are all kept here; and the transportation accounts, both passenger and freight, are kept here. The agents at the different points along the line of the road make, at stated periods, their reports here as to their headquarters; and all the orders for the management of the trains, to the men on the road, and of the business of the road generally, proceed from these offices. Detroit is the principal terminus of the road, and from which all control of the road emanates. I mean, by this, that the daily and ordinary control of the road proceeds from this point as headquarters. The vice president, the superintendent, the local treasurer, the local superintendent and the cashier, all reside in Detroit; and, so far as deponent's knowledge extends, the board of directors, neither by their own acts nor by committee, have anything to do with the management of the road; the control of the road is left to the judgment and discretion of the vice president and superintendent. The principal buildings of the road are located at Detroit. All the books and papers pertaining to the several departments of the road are kept in Detroit.

(The foregoing testimony of Mr. Noyes was objected to by Mr. Foote, the counsel for the defendants, at the time the same was offered, and testimony taken subject to objection.)

EDWIN NOYES.

George Davis, a witness produced and sworn on the part of the complainant, says, that he is the cashier of the complainant, and resides in Detroit.

The following question, viz:—Do you know where the chief place of business of the complainant is; where the headquarters of the complainant are; and where the home of its chief acting officers?—objected to, and the answer taken subject to objection.

Answer. I do; deponent's knowledge dates from the month of March, A. D. 1851. From that time it has been in Detroit; of his own personal knowledge he knows nothing about that previous to that time. The residence of the principal managing officers of the road is at Detroit. The residence of the local treasurer's office has been at Detroit since that time. The payments connected with the expenses of the road have all been made in Detroit. The income and expense accounts have been kept there; and the transportation accounts, both from passengers and freight, have been kept there since said month of March. The agents of the company at the different points along the line of the road make, at stated periods, their reports here as headquarters. The orders for the management of trains, to the men of the road, and of the business of the road generally, proceed from the offices at Detroit. Detroit is the eastern terminus of the road, and from Detroit all control of the road emanates. The superintendent, the local

treasurer, the local superintendent and the cashier, have resided in Detroit since March, 1851. The office of vice president was created in October last, and the incumbent of that office has resided here ever since. All these officers have, since those times, had their offices in the buildings of the company, in Detroit. The books and papers of those offices have been kept in Detroit. The principal buildings of the company are at Detroit. The superintendent has had the control and management of the road heretofore, meaning before the office of vice president was created; and since that time, as he supposes, in connection with the vice president.

(The foregoing testimony of Mr. Davis was objected to by Mr. Foote, the counsel for defendants, at the time the same was offered, and testimony taken subject to objection.)

GEORGE DAVIS.

A. MANDELL,
Circ't Ct. Com'r, W. C. M.

Joseph W. Smith, a witness produced on the part of complainant, being duly sworn, says, that he resides in Detroit, and is acting as statistic clerk of the company, complainants. Has been in that employment since the last of December, A. D. 1852. It is his business to keep an account of the business of the road between Detroit and Jackson, and Jackson and Detroit, as well as an account of all the other business of the road. The business of the road between every separate point and Detroit, and between different points, is kept separately. It is deponent's business to make the original entries in the books of the company from the agents of the company; the freight accounts are made up from the original duplicates made out by the freight agents, who forward the freight, and the passenger accounts are made out from the reports of the conductors. Deponent has examined the accounts kept in his office, and is able to state the amount of business done upon said road of complainant between Detroit and Jackson, and Jackson and Detroit.

Question. For the year ending March 1, 1852, can you state what were the earnings of the road for business done on it between Detroit and Jackson and Jackson and Detroit, referring to business that passes over the whole road between those points?

(Question objected to by counsel for defendants, and answer taken, subject to objection.)

Answer. I can state it from personal examination of the books and papers of the company in my office, and it amounts to forty-eight thousand seven hundred and eighty-seven dollars and ninety-two cents.

Question. Can you make a like statement for the year ending March 1st, A. D. 1853?

(Question objected to and answer admitted, as above.)

Answer. I can; the business amounts to fifty-eight thousand one hundred and five dollars and five cents, for the last-named year. De-

ponent kept the freighting accounts of said last-mentioned year for the last five months thereof, and the passenger accounts for the last two months of that year.

Question. Can you make a like statement for the year ending March 1st, A. D. 1854?

(Question objected to and answer admitted, as above.)

Answer. I can; during all that year I kept the accounts myself, and the business between said points for freight and passengers amounted to sixty-two thousand and seventeen dollars and sixty-eight cents. In these statements deponent confines himself to the business, on the one hand, coming on the road at Detroit, passing over the road to Jackson, and there leaves it; and on the other hand, coming on the road at Jackson, passing over the road, and leaves it at Detroit.

Question. Have you, taking the ratio of the increase of the said business for the said years, calculated to what amount it would reach if the same rate of increase should continue for the three next ensuing years?

(Question objected to and answer taken, subject to objection.)

Answer. I have. For the year ending March 1st, 1855, it would amount to the sum of $69,925 29; for the year ending March 1st, 1856, the sum of $78,838 93, and for the year ending March 1st, 1857, the sum of $88,890 77.

JOSEPH W. SMITH.

On cross-examination, deponent states, that he entered the office of statistic clerk of the company (complainants) between the middle and last of December, A. D. 1852. David Burrill kept the books before him, and was the statistic clerk before him, and for a month and a half immediately preceding deponent's coming into the office, and immediately after Mr. Burrill left, the books were kept by Mr. Hunt, who kept the passenger accounts, merely. Deponent thinks Mr. Burrill is now at Adrian, and that Mr. Hunt is now one of the firm of Hunt & Newberry, att'ys, &c., of Detroit. The reports of the conductors are in writing, signed by them, and are handed by them at this time to a Mr. Fraser, general ticket agent, who hands them to deponent, as statistic clerk; this has been the practice since deponent has been in the office. They were not in all cases brought in by Mr. Fraser in person; they were usually brought, when not by him, by clerks in his office; thinks that since deponent has been there, the conductor's reports have generally gone through Mr. Fraser's hands. The freight bills from Detroit westward to Jackson are made out by the freight agent at Detroit, or his clerks, and a duplicate of the same, signed by him or clerk, is handed into deponent's office. The freight bills from Jackson eastward to Detroit are made out in writing, and a duplicate, signed by the freight agent at Jackson, is brought in, as he thinks, by the passenger conductors; he does not know that they are brought in by the passenger conductors; they are brought into deponent's office by a clerk; in the duplicate office, adjoining that of deponent, these freight bills above

mentioned contain a statement of the amount of charges on freight sent over the road, and not the amount of receipts.

JOSEPH W. SMITH.

Examination of witnesses was here continued till the next day, viz., April 1st, 1854, at 9 o'clock, a. m. The same parties attended, when

Charles G. Hammond, a witness produced and sworn on the part of the complainant, says, that he now resides in the city of Chicago; his age is forty-nine years, and he is now agent for said complainant, at Chicago; left Detroit for Chicago about the first of April, 1852; with about 3½ years exception, deponent has resided in Detroit since December, 1834, up to the time he went to Chicago, as aforesaid. Deponent was auditor general from the 1st of April, 1842, till the 31st of May, 1845, and had been a member of the State legislature for 1840 and 1841.

Question. Do you know, in the fall of 1845, how far the Michigan Central Railroad had been constructed; from what point, the conditions of its route, its road and its rolling stock; and if so, state your means of knowledge and what the facts are?

(Question objected to and answer admitted, subject to objection.)

Answer. I do. In the fall of 1845, the road of complainant was extended to or near Kalamazoo, from Detroit; the general condition of the road was that of a strap railroad; the east end of the road was in a dilapidated condition; the eastern end of the road, or ten miles of it, was opened, as deponent thinks, in January, 1838; and to Ypsilanti, 30 miles, in the spring of 1838; the strap rail, particularly the eastern end of it, was the lightest strap rail deponent has ever seen used, excepting in Michigan; thinks the road was opened to Jackson early in the year of 1842. Its route was objectionable, in deponent's estimation, between Ypsilanti and Dexter, on account of its numerous curves in following the windings of the Huron river, which affected its value materially; said curves would prevent rapid running with safety, and would also materially diminish the amount of freight drawn in any one train; for that reason, it became necessary to have a new *alegeiment* of the road, or to relocate and straighten the line of the road between Ypsilanti and Dexter, making it necessary to cross the Huron river, frequently some nine times, as deponent thinks, between those points, requiring costly bridges, where before the road had but two or three crossings between those points; the eastern portion of the road was dilapidated; deponent means that part which been very much used.

In the fall of 1845 the iron between Detroit and Dexter was very much broken, and the wooden superstructure was so much decayed as to require frequent repairs. As you proceed west from Dexter the road was in better repair, having been more recently constructed. Up to that time the road had not generally been ballasted, but the track was laid upon the soil of the country through which it passed. The water-stations were insufficient to protect them against the severity of the

weather, and it was provided with insufficient depôts. There were no station depôts for the protection of cars in Detroit, and generally insufficient depôts along the whole line of the road; at that period the rolling stock of the company was entirely inadequate to perform the business of the road, not amounting to one-fourth of what was necessary to stock the road of such length; there were but four passenger cars of eight wheels. At that time the State had difficulty on account of the road being laid where it had not secured the right of way, as was claimed by the owners of the land. The whole road east of Jackson had been used as long as it was profitable to use it without reconstruction, and the road east of Dexter required immediate reconstruction. The State had not the means, without taxation, to reconstruct the road or make the necessary repairs, and the warrants which had been issued in payment for the construction of the road, and then outstanding, were depreciated to the extent of fifty or sixty per cent., and the State had no means to pay them. At that time the State could not, upon its own credit, raise the amount necessary for the reconstruction or necessary repairs of the road. The State officers, some short time previous to the fall of 1845, were obliged to pledge their individual credit to purchase iron to lay upon the last section of the road from Battle Creek to Kalamazoo. The State commenced paying in State scrip, for the construction and repairs of the road, in the year 1840, and either paid in State scrip or in warrants upon the treasury, generally termed "internal improvement warrants," for such construction and repairs, to and including the year 1845, which scrip and warrants were greatly depreciated in value, and this depreciation caused the State, for the years 1843, 1844, and 1845, to pay about one hundred per cent. more for labor than if it had been paid in cash. In letting contracts, the prospective depreciation was taken into consideration by the contractor. The nominal cost of the road, from Detroit to Kalamazoo, and its stock, was about two millions of dollars.

Question. Do you know the motives of the State government which induced them to sell the road?—and, if so, state.

(Question objected to, and answer taken subject to objection.)

Answer. I think I do. The inability of the State to prosecute the work to completion, and to run it successfully. This was the pecuniary motive which induced them. The sale had been the subject of discussion amongst the State officers for some three years before the year 1846.

Question. From your knowledge of the state of the Central Railroad, the condition of the road, right of way, and rolling stock, and the appurtenances, as sold by the State to the Michigan Central Railroad Company at the time, can you state what was the actual value thereof to such a company, obliged to build such a road as provided by the act, independent of the special privileges and guaranties contained in said act in favor of said company?

(Question objected to, and answer admitted subject to objection.)

Answer. From an estimate I made at the time of the sale, I placed

the value at one million of dollars at that time; from a more intimate knowledge of the subject since the sale deponent thinks he estimated the value too high. The whole planning and arrangement of the road was for a very light service; the engines, for which it was designed, were but of ten or twelve tons; the superstructure and bridges were made light accordingly, and were insufficient for the duties the complainants were obliged by their charter to perform.

Question. What was the worth of the Central Railroad, as sold by the State of Michigan, to the complainants in the construction of the road required of them by their charter?

(Question objected to, and answer taken subject to objection.)

Answer. I think it was not worth more to the company, including its rolling stock, than five thousand five hundred dollars a mile, the company having substantially to reconstruct the entire road.

(The foregoing testimony was objected to by counsel for defendants at the time the same was taken, and the same was taken subject to objection.)

C. G. HAMMOND.

On cross-examination deponent says, that he had seen strap-rail used in the States of New York and New Jersey; had seen no flat rail used at the time spoken of, the time of the sale, that was not twice the weight of that used on Central Railroad. Deponent judges from the size of it, having seen a portion of the road between Utica and Schenectady, and Buffalo and Attica, a small portion of a road in New Jersey, and from his passing over said roads as a passenger, and examining the rails at the depôts and stopping-places; he has never weighed it. He has no other means of knowledge except from observation, as above stated. He is acquainted with about the appraisal of the rolling stock of the Central Railroad by the acting commissioners of internal improvements in the years 1844 and 1845; and from deponent's knowledge of the value, he thinks the appraisal was fully up to its value. He does not know of his own knowledge the situation of the rights of way, as a whole, of the line of the road, so far as the same was completed by the State at the time of the sale. Has no personal knowledge that there were rights of way unsettled along any portion of the line of the road. He cannot state how long the strap-rail was used by the company between Dexter and Jackson after the road passed into the company's hands, nor can he state how long it was used between Ann Arbor and Jackson after the sale, or any other points. Deponent kept no notice of the time of relaying the tracts by complainants. Does not know what the nett earnings of the road, over and above its running expenses, were for any year previous to the sale, from 1840 to 1845. The market value of State scrip in 1845 was about ninety cents on the dollar.

Question. About what was the market value of State scrip in the year 1844?

Answer. Cannot say.

Question. What for the year 1843?

Deponent thinks he saw it sold for 65 and 68 cents on the dollar.

Question. What was the value of State warrants during the year 1845?

Answer. From 38 to 55 cents on the dollar. The lowest market price that ever came to deponent's knowledge of State warrants was thirty-eight cents. Does not know what was the market value of scrip or warrants prior to the year 1842. During the year 1842, his impression is, the market value of scrip was about seventy-eight cents; that is the lowest sale I recollect of. The value of warrants depreciated rapidly during that year; my impression is, that they were sold during that year for about fifty cents, and that the highest price of warrants was sixty-three cents for that year, and the lowest about fifty cents.

Question. About what was the average price of warrants during the year 1843?

Answer. Cannot make an average; knew a sale in the early part of 1843 at forty-eight cents.

Question. Do you know any other sale in 1843?

Answer. I cannot call to mind any other sale.

Question. Do you know what was about the average price of State warrants during the year 1844?

Answer. I cannot make an average. I cannot call to mind any special sales during that year.

Question. Do you know of any sales being made during that year?

Answer. I cannot call to mind any special instances of sale, but I have no doubt I knew at the time of a hundred of them.

Question. Do you recollect the price paid at any of these sales during that year?

Answer. Not recollecting any special instances of sale, cannot recollect the prices.

Question. From your recollection of sales made during that year, can you form any general opinion of the market value of warrants during that time?

Answer. I have no recollection of any special sales during that year, but my general impression is, that the value of warrants was about forty-two and forty-four cents.

Question. From what do you base your estimate of the value of the Central Railroad at the time of the sale?

Answer. I base it upon its value to the company under the charter. Considering the necessary alterations in the line of the road, and the new bridging requisite, I suppose the road worth to the company the cost of grading and value of strap-rail only, which I estimate at five thousand five hundred dollars a mile. Has never been engaged as a railroad contractor or in the constructing of railroads, excepting to a limited extent for the last two years.

C. G. HAMMOND.

A. MANDELL,

Circuit Court Commissioner, Wayne co., Mich.

On examination direct resumed, deponent states:

Question. Whether at any period of time, to your knowledge, the State paid the expenses of running, or the construction or repairing of the road, in State scrip; and if yea, when?

Answer. I cannot answer of my own knowledge.

(Question and answer objected to, and received subject to such objection.)

Question. Whether the witness knows whether the officers were or were not governed by any particular policy *or* in drawing up their reports of the earnings of the roads; and if yea, what? and particularly whether they were induced to frame those reports so as to show a favorable report in regard to the earnings and condition of the road?

(Question objected to, and answer received subject to objection.)

Answer. My impressions of the policy by which the State officers were governed in this matter were gathered from conversations with them, and also from consultations with them. The policy was to make the condition of the road appear as well as they could, and the reason was to stimulate and encourage the people to meet the burden imposed upon them of the system of internal improvements, because the State officers felt that there was great danger of repudiation by the people, and they desired to avoid that emergency. The consultations were more generally with Mr. Adam, then State treasurer, and a member of the board; but he had consulted occasionally with all the members of the board, and also with the governor.

Question. You have stated, in your cross-examination, that State scrip was worth in the year 1845 ninety cents on the dollar, and the warrants at fifty-five cents; what produced this rise in value?

Answer. The scrip was withdrawn from circulation principally by payments for taxes. Being received for taxes, it would be appreciated in value. The warrants, by enactment of the legislature, were receivable for internal improvement lands, so called.

(Question and answer objected to at the time the same were offered, and answered, and admitted, subject to objection.)

Question. Did the road realize enough nett revenue, even as presented by the policy of making favorable accounts, to pay the wear and depreciation of the track and rolling stock, so as to realize a fund sufficient to replace and preserve the same in good order and condition?

(Question objected to and answer admitted, subject to objection.)

Answer. I do not recollect the amount of reported nett revenue; but the anxiety of the State officers was based upon the idea that it was not a paying concern, and that it was expedient, as a pecuniary measure, for the State to sell the road.

Question. Do you know whether, prior to the sale to the Michigan Central Railroad Company, the State had not from time to time located many stations and points for depôts, but had left incompleted the purchases therefor and for necessary ground incident thereto; whether there were not also left a considerable amount of rights way unpaid for; whether the fact of such locations of such stations and depôts did

not enhance the value of the grounds upon which they were to be located; and whether, in consequence of such enhanced value, the Central Railroad Company were not compelled to pay, in completing those purchases, an immensely larger value and price than they would have had to pay therefor if they themselves had commenced and completed the purchases.

(Question objected to, and answer received subject to objection.)

Answer. I know that such locations had been made, and understood that the grounds had not been secured in all cases. This I gathered from conversation with the State officers, and in part from the railroad officers, subsequent to the sale. As to the remainder of the matter, deponent has no personal knowledge, and it is merely left for his inference and deduction.

C. G. HAMMOND.

Cross-examination resumed.

Question. Do you know, from the conversation had with them, whether there was any attempt on the part of the State officers, in their report of the nett earnings of the road, to present a more favorable report than the facts would warrant?

Answer. I would say that the policy adopted would warrant it.

C. G. HAMMOND.

George E. Hand, a witness produced and sworn on the part of the complainants, says: that he resides in Detroit; that he was a representative from the county of Wayne, in the legislature of the State of Michigan, in the year 1846; was chairman of the select committee on the sale of the works of internal improvement of this State. The subject of the sale of the Central Railroad was one of the subjects before this committee by the action of the House. There is now shown to deponent what purports to be a report of that committee on the introduction of a bill for the sale of said Central Railroad, purporting to be House document No. 2 of the legislature of this State of 1846, and purporting to be signed by witness as chairman, and witness is now asked if that is a true copy of the report made by said committee to said House, and by it accepted. The said copy of said report, so now exhibited to witness, is contained in "Exhibit A," hereto annexed. (To the introduction of which report, and the interrogatory based thereon, defendant's counsel object, and the answer is taken subject to objection.)

Answer. As chairman of said committee, with their concurrence, and by their direction, I reported to the House of Representatives of the State of Michigan a bill for the sale of the Central Railroad and to incorporate the Michigan Central Railroad Company, and at the same time by the like direction I made a report in connection with that subject, and as chairman of said committee, which report was accepted by said House. The document now exhibited to me, purporting to be House document No. 2 of the legislature of 1846, as printed, is, according to my best knowledge, recollection, and belief, a true copy of

said report. I have no doubt of its being a correct copy—said report was printed by an order of the House; Exhibit A is a true copy of it.

Question. Are you acquainted with John W. Brooks, named in the act of incorporation?

Answer. I am.

Question. Who appeared on behalf of the proposed corporators in the said act, afterwards passed, named and negotiated, with said committee, relative to the sale of said Central Railroad, and with whom did said committee negotiate from time to time in reference to said sale, prior and up to the passage of said act during the session of the legislature of 1846, and while said committee were acting for and in behalf of the said legislature or of the said House?

(Question objected to, and an answer taken subject to objection.)

Answer. The aforesaid John W. Brooks was considered and treated by said committee as the agent and exponent of the views and wishes of the proposed purchasers of said road. The negotiation touching the sale of said road and the form of the corporation was principally had by and between the chairman of said committee and said Brooks; occasionally the counsel of said Brooks, James F. Joy, esq., appeared before said committee, or their chairman, in connection with said negotiation. (The witness is here shown, in the statutes of the State of Michigan for the year 1846, an act entitled "An act to authorize the sale of the Central Railroad and to incorporate the Michigan Central Railroad Company," and especially the prohibitory clause contained in section five of said act prohibiting railroad or railroads from the eastern or southern boundary of the State to be built, &c., as therein enacted, and the witness is asked to state what induced the insertion of said prohibitory clause, and all the circumstances and negotiations which preceded and induced such insertion.)

(Question objected to and answer taken subject to objection)

Answer. The subject-matter of the sale of the public works, which by resolution had been referred to that committee, occupied the attention of the committee about six weeks before any bill was reported—a bill had been nearly, or quite, prepared to be reported to the House for the disposition of the Central Railroad, which had no reference to the persons who ultimately purchased it. The negotiations subsequently had with Mr. Brooks, acting on behalf of the proposed purchasers, extended over some weeks, say two or three weeks. The more important features of the sale and purchase proposed to be made of the Central Railroad, and of the bill to incorporate the purchasers, were matters of repeated, long and deliberate consideration with said committee, and between said committee and Mr. Brooks. The more important features of the terms of sale were agreed upon between the committee and Mr. Brooks, subject of course to the action of the legislature thereon. Section five of the act referred to, except perhaps a small portion at the end of it, is substantially, as witness believes, as agreed upon between the committee and Mr. Brooks; that portion of it which inhibits any railroad being built from the eastern or southern

boundary of the State which shall without the consent of the company approach westwardly of Wayne county within five miles of said railroad, was during said negotiation spoken of by said Brooks as a very material and important provision, as it might protect them from being tapped from the east or south, and having their business, or a portion of it, which could otherwise be done on said road, diverted and taken off in some other direction.

Mr. Brooks said that he had no objection to the roads being intersected by roads from the north or west, as they would operate as feeders to this road, and there seeming to be no serious objection in the mind of the committee, said inhibition was substantially incorporated in the bill as reported by said committee to the House. The committee were disposed to insert in said bill as few restrictive provisions in favor of the proposed corporators as possible, provided only that they could secure the sale of the road for the sum of two millions of dollars, and secure the early completion of the road to Lake Michigan and re-building of that portion east of Kalamazoo, and at the same time protect the public interests in regard to passengers, freight, taxes, and otherwise. The committee inserted in the bill, which they reported to the House, only such restrictive provisions in favor of the proposed corporators named in said bill as the committee deemed vital and indispensably necessary to secure the sale of the road; which sale was deemed by the committee as a matter of great interest and importance to the prosperity and welfare of the State. This bill was based upon special terms of agreement between the committee and Mr. Brooks, which resulted from said negotiations, and of course was subject to approval or disapproval by the legislature. There were several different provisions insisted upon by Mr. Brooks and inserted in said bill, which were represented by Mr. Brooks to be of such importance that the omission of any one of them might very probably defeat the sale of the road, and prevent the proposed purchasers from purchasing the same. Mr. Brooks treated the inhibition in said section five above referred to, as one of the most important features of the bill.

GEORGE E. HAND.

Samuel Stone, a witness produced and sworn on the part of the complainants, says, he formerly resided in Detroit, and was secretary of the Board of Internal Improvements from the spring of the year 1842, to the sale by the State of the Central Railroad.

Question. Do you know in what kind of currency the board paid for the construction and labor in and about the Michigan Central Railroad; the value of such currency from time to time; and if he knows anything of the mode in which the reports, in reference to the Central Railroad, were made up so as to exhibit the same in an unduly favorable light? The witness being asked to reply thereto, for and during the time while he was acting as secretary as aforesaid.

(Objected to and answer taken subject to objection.)

Answer. The payments for the construction of the road were made

in internal improvement warrants and internal improvement land warrants. The expenses and charges for the running part of the road was generally, until 1845 and 1846, paid in what was called State scrip. The internal interest warrants, in 1842 and 1843, were worth from thirty-seven to forty-three cents on the dollar; in 1844 they advanced up to fifty cents and a little over; and in 1845 they varied in value, sometimes rising up to fifty and sometimes to sixty-five cents, as the State was more or less depressed for want of means to carry on the construction of the road, and sometimes they could not be sold without great sacrifice. The land warrants, in the year 1844 and 1845, fluctuated so much in value that it is impossible to fix a valuation upon them for that period, as an average ranging from thirty-eight to sixty cents. The State scrip in 1842 was, at an average, worth seventy-five cents; in 1843 about the same; in 1844 there was an advance up to eighty-five cents and eighty-seven cents, but was subject to great fluctuation; and in 1845 the average was about ninety cents, fluctuating as there was more or less of it issued; as the prospects of the sale of the road became more flattering, it had the effect to raise the State currency in the market.

SAM'L STONE.

A. MANDELL,
Circuit Court Commissioner, W. C., M.

On cross-examination witness states: that the repairs of the road were put under the head of running expenses, which was paid in scrip; does not recollect in what year land warrants were issued, but thinks in 1843 or 1844; the highest price of interest warrants in the year 1843 was, as he recollects, forty-three cents; in 1844 fifty-seven cents, and 1845 sixty-five to sixty-eight cents; in 1844 and 1845, the highest price of land warrants deponent cannot recollect.

SAM'L STONE.

The further examination of witnesses was here continued till the sixth day of April, A. D. 1854, and from then adjourned from time to time until the nineteenth day of April, A. D. 1854, when it was resumed by the re-examination of Mr. Edwin Noyes, who was first examined on the 31st day of March last, and whose testimony is herewith appended.

Edwin Noyes recalled and examination resumed.

Question. Can you state the relative distance from Jackson to New York city and other eastern markets by the route from Jackson to Detroit and to New York, and from Jackson by the proposed route to Toledo and the south shore of Lake Erie to New York?

(Question objected to, and answer taken subject to objection.)

Answer. Jackson, by the Jackson Branch so-called, around the south shore of Lake Erie to Buffalo, and thence by way of Albany to N. Y. city, the distance would be 806 miles or thereabouts, as the rails

are now laid and contemplated to be laid, as I understand it. From Jackson by the same route to Dunkirk, and thence to N. Y. over the New York and Erie road, the distance would be 783 miles or thereabouts. From Jackson around the south shore by the same route to Cleveland, and thence by what is called the Mahoning line to N. Y. city, as it is contemplated, the distance is 716 miles. From Jackson through Detroit, via the Michigan Central road, the Great Western road to suspension bridge, thence by way of Rochester and Albany to New York city, the distance is 748 miles or thereabouts. That the threatened Jackson Branch will constitute a competing line from Jackson to New York, from its comparative distance from New York by either route.

EDWIN NOYES.

John M. Berrien, a witness produced on the part of the complainants, and sworn, says, that he is a civil engineer, and has been so some twenty years; he was in the employ of the Detroit and St. Joseph Railroad Company, in the State of Michigan, as its chief civil engineer shortly after the company commenced its construction; remained in the service of that company until the road was sold to the State; from that period continued in the service of the State as chief engineer of that road until it was sold to the Michigan Central Railroad Company, the complainants, by the State; and since that time, until the completion of the road to Chicago, acted in the same capacity; he is familiar with the route, structure, and condition of this road, and everything pertaining to it.

The road was finished from Detroit to Kalamazoo, 145 miles, when the State sold to the company complainant. It was completed to Kalamazoo during the winter of 1845 and 1846. The track of this road was a light wooden rail, a light iron bar; the bar varying from two to two and a half inches in width, and from a half to three quarters of an inch in thickness when new. The eastern portion of this track, say between Detroit and Ypsilanti, which had been in use some eight years, was very much worn; the iron badly broken, and in such bad condition that it was difficult to keep a train of cars on it. From Ypsilanti to Dexter, about 18 miles, although the track had not been so long in use, it was but very little, if any, better. The next portion brought into use was between Dexter and Jackson, which, having been less used, was in somewhat better condition. From Jackson to Marshall the track was still better, and from Marshall to Kalamazoo the track was new, and had been used but a few months. The bridges and culverts on the line were all of wood, with perhaps two or three culverts exception; some of the bridges were nearly rotted down for want of care and attention, and the remainder of them were generally of light construction, and not calculated for the heavy business the company contemplated doing; all the river bridges between Marshall and Kalamazoo were taken down by the company and re-built, not being strong enough for the business the company contemplated doing; that the bridges be-

tween Detroit and Marshall were, many of them, propped up, some after the purchase was made, and they have been, from time to time, taken down, being inadequate for the business, and re-built by the complainants.

There were very few buildings on the road belonging to it; there were no warehouses, except the one at Detroit, and that was upon public ground. The running stock of the road, at the time of the sale to the complainants, was small in quantity and small in value, and ill adapted for the business which the charter of the company required the company to perform. Immediately after the sale to the company, the company had to straighten that part of their line running through the Huron Valley, and also at Marshall. This was requisite, in consequence of the short curvatures which existed at those places before, and it was essential to do so, for more rapid running and the heavy trains run by the company. The work which the complainant had to abandon after its purchase from the State, in order to adapt it for the purposes, for the better carrying of passengers and freight, was among the most expensive done by the State, in the making of the road, and such portions, when abandoned, were of no value to the complainants. Shortly before the sale by the State to the complainants, by the direction of the State, he examined what rights of way were secured, and what not, along the route proposed to be sold, and made plans and abstracts of the results of his examination, and he found a very considerable portion of the rights of way unpaid and unsettled, for which have been settled and paid for by the company in many instances, and as he supposes in all. I am not aware that the State had purchased any depôt grounds outside of the right of way, and had they made such purchases, I think I would have been aware of it. The State had located the stations along the route, but had not purchased any extra grounds. The State having so located the stations, but not purchased the extra grounds, the fact of so locating greatly enhanced the purchase price which the company had to pay for such extra grounds. He is familiar with the conditions which the act of the legislature of the State of Michigan imposes upon the complainants.

Question. In view of the kind of road contemplated by said act; the manner of running the same, and the requirements of the said act in reference thereto, and taking into view also the condition of the road and running stock, as testified to by you at the time of the sale, state what in your judgment was the value in cash of the road, and all its incidents and appurtenances as sold by the State, towards the construction of such a road as the said act required them to build, equip, and operate under the restrictions imposed by the act?

Answer. I consider that the road, and what was sold by the State to the company by said act, was worth but little more to the company than the value of the grading, which was of course valuable to them, so far as they used the same. The company was required by the charter to relay the track with a heavy rail of not less than sixty pounds weight to the yard. And I consider the old track worth nothing more

to them than the use they had of it in re-constructing the track, and the value of the old material. The cars and engines were of course worth something; it is difficult to say how much; they having been in for some time, were not worth as much as first cost, and they were ill-adapted to the road required by the charter. The grading of the road might have been done at a cost of three thousand or thirty-five hundred dollars a mile, and I should consider, that one thousand dollars a mile in addition to that would cover the value of all that the company purchased of the State, except its franchises (All the foregoing testimony was objected to at the time the same was taken, and taken subject to objection.)

JNO. M. BERRIAN.

On cross-examination, witness states that he is now chief engineer upon the Central Military Tract road in Illinois.

Question. Do you know whether persons in the employ of the Michigan Central Railroad Company are directors or officers in the Central Military Tract road?

Answer. I know of no persons except Mr. Brooks and Mr. Hammond, who are connected with both companies; Mr. Brooks is president of the Military Tract road; Mr. Joy is a director of that road also. Deponent made a written tabular statement of the condition of the right of way referred to in direct examination, while the subject of the sale was under consideration, and before the sale. This report was made to the commissioners of internal improvement; the examination was made by me personally. Does not know that the agents of the company, before the sale, examined the statement, but they had an opportunity to do so if they pleased. The road was built with cash, to Ann Arbor, about 40 miles from Detroit, and the work was put under contract at cash prices, to Jackson, but not completed; part of that was paid in cash, part in scrip, and part in warrants.

Question. Was the road built from Jackson west as cheap as the road from Detroit to Jackson, taking the same amount of labor and materials expended into consideration?

Answer. *No.* That a hundred dollars in warrants did not go as far as a hundred dollars in cash had done where the road had been built with cash. Does not know what the State or the commissioners paid for their iron, spike, and engines; does not know of whom any part of the iron of the road was purchased, except by hearsay.

Question. Was not the depôt building at Jackson used to some extent for the storing of produce prior to the sale of the road?

Answer. Not that I am aware of.

Question. Were not the depôt buildings used by the State larger than the passenger depôts now used by the company at the same points?

Answer. There were four buildings built by the State on the line of the road, one of which was burned previous to the passage of the act, which buildings were from 140 to 150 feet in length, and 50 feet wide.

Those buildings were larger than the depôts now used there for passenger purposes.

Question. What kind of service was required of the complainants under and by virtue of the terms of their charter?

Answer. They were required by their charter to build a first-class road; to run their road every day in the week, except Sundays, and they were required to do, in all respects, a first-class business. The weight of rail was specified; the weight of the cars and engines was not, nor the size of them.

Question. Specify in what particular the cars were ill-adapted to the kind of road required by the charter.

Answer. They were inconvenient in size and shape, and their running gear was too light, and subject to frequent breakage. This applies both to passenger and freight cars. The running-gear was too light for the size of the cars themselves, and the weight they put into them. (The above cross-examination taken subject to objection, being objected to at the time the same was taken.)

JNO. M. BERRIEN.

Direct examination resumed, says:

Question. Was the motive power and cars both for persons and property, or either, sold by the State to the complainants, adapted for the expeditious and convenient transaction of the business and transportation of persons and property offering for transportation on the road according to the usual course of business upon the line and route of the road, even at the time of the sale?

Answer. The whole establishment was out of order and insufficient for the purposes mentioned in the question.

Question. In your cross-examination you spoke of the road while being constructed by the State of contracts being let in some instances at cash prices, and paid for in warrants. In such instances, or many of them, were not the contractors compensated therefor in damages?

Answer. They were in a number of such cases.

Question. In your cross-examination you spoke of several depôt buildings being constructed, four in number, along the line of the road; were they not constructed from time to time as the road reached a given point, and so as to serve the purposes of a terminus; the larger part of the buildings being designed and used for a mere shelter for the cars and engines, while waiting over night at the then terminus; and as the road progressed, and such point ceased to be a terminus, were not the buildings, thus erected, ill-adapted and to a great extent useless for an intermediate station?

Answer. The buildings were better adapted for the end of a road than for way stations—but were not useless as way stations.

(Objected to.)

JNO. M. BERRIEN.

Cross-examination resumed.

Cannot state what amount was paid by way of damages on said contracts; knows of cases where damages were awarded or paid; had nothing to do with the making of the awards, and only knows of the awards or payments by statements of State officers; my duties as chief engineer of the road were to locate the road and construct it under instructions from commissioners; to prepare or cause to be prepared estimates for contractors and accounts for all work done along the line; had nothing to do with the repairing of the road or with the running department of the road, or with the management of the road after it was constructed.

(The foregoing direct examination was objected by the counsel for the defendants, and the cross-examination was objected to by the counsel for the complainants at the time the same was taken, and taken subject to objection.)

JNO. M. BERRIEN.

Ivers P. Morris, a witness produced and sworn on the part of complainants, says, he resides in Detroit, and is about 38 years of age; is a surveyor and civil engineer.

Question. Do you know a railroad in this State known as th Tecumseh Branch road, running from the village of Tecumseh, in this State, to the city of Adrian, in this State, and there connecting with the Erie and Kalamazoo Railroad; if yea, how does that connection occur; if not at Adrian, what distance from it, and how; whether, if the connection does occur, is it now done without backing the cars up to Adrian; is it done at the present time without such backing; have you been at the point recently and examined the same; did you make any map or plat thereof? If so, exhibit the same.

(Question objected to, and answer admitted subject to objection.)

Answer. Know that there is a railroad in this State known as the Tecumseh Branch, running from Tecumseh connecting with the main line of the Michigan Southern Railroad at a point about four miles and a half east of Adrian.

Question. Could a switch be made from the Tecumseh Branch to the westward near its junction, with the main line of the Southern Railroad connecting the said branch with the said Southern Railroad, so as to run trains from the Tecumseh Branch to Adrian in the usual manner of running trains without backing up?

Answer. Yes.

Question. How do you know?

It can be done; (and offers here to exhibit a map, and does exhibit a map marked "Exhibit B," and hereto annexed, which said exhibit is marked, by the witness signing the same, showing the manner in which the same can be done.)

Question. Have you recently been upon the ground at the point of connection and examined the tracks, turn-outs, and other conveniences

for running trains between said Tecumseh Branch and the main line of the Southern Railroad, and the Erie and Kalamazoo Railroad?

Answer. I have.

Question. Did you find the track, recently constructed, connecting the Tecumseh Branch with the Michigan Southern Railroad to the westward, as conveniently constructed for operating as the old curve connecting the same branch with the said main line towards Monroe?

(Question objected to, and answer taken subject to objection.)

Answer. I found it easier.

Question. Would it be convenient, and not expensive, to construct a curve connecting the Michigan Southern Railroad with the Erie and Kalamazoo Railroad east of, and near Adrian, so that cars could run from the Tecumseh Branch towards Adrian, to the said curve over it, and upon the Erie and Kalamazoo Railroad to Toledo, without any backing up or other inconvenience to running trains?

(Question objected to, and answer taken subject to objection.)

Answer. It can be done easily and without much expense, and produce the effect contemplated by the question.

Question. How long would it take to construct such a curve, if constructed by fifty men, in your judgment?

(Objected to, and answer taken subject to objection.)

Answer. Perhaps two or three weeks.

Question. Suppose the two curves, one of which has been done, and the other which you have testified could be done, were completed, could trains from the Tecumseh Branch be run to Toledo with convenience and despatch?

(Question objected to, and answer taken subject to objection.)

Answer. They can.

Question. If the old curve leading towards Monroe be the only one used, and the trains backed up from that to Adrian and then run forward to Toledo, how much time would be lost by reason of such backing over, the time used in running it in the way contemplated in the last question, equal safety being always considered?

(Question objected to, and answer taken subject to objection.)

Answer. About ten minutes each run.

Question. Do the tracks and figures on the plan exhibited in Exhibit B, as above, represent truly the positions of the tracks, as you found them on your late examination before spoken of?

(The counsel for defendants here objects to the introduction of said "Exhibit B," and, when the same was before referred to, objected to its introduction; and question objected to.)

Answer. They do.

J. P. MORRIS.

On cross-examination witness states, that he is familiar with the running of cars, and is in the employment of the complainant as a civil engineer in doing the work along the line of the road. He cannot tell the distance of the Erie and Kalamazoo road one mile east of the

depôt at Adrian from the main line of the Southern Railroad, nor can he tell the distance at any given point, not having personally examined the same.

J. P. MORRIS.

"Exhibit A," referred to in foregoing deposition of George E. Hand.

Legislature, 1846.—House Doc. No. 2.

Report of the Select Committee on the sale of the works of Internal Improvements, upon introducing a bill for the sale of the Central Railroad.

The select committee, to whom was referred so much of the message of the governor as relates to the sale of the works of internal improvements, and to whom have been also referred great numbers of petitions, very numerously signed, and coming from almost every part of the State, praying for the sale of the public works, beg leave to report:

That they have given to the recommendations of the executive contained in his message, and to the numerous petitions referred to them touching the sale of the public works, the most careful attention and consideration, as well from the great importance of the subject itself as from respect due to the recommendations of the executive, and the very marked indications of the popular will manifested in the petitions. How fully the recommendations of the governor for a sale have been responded to from the people, is strikingly seen from the fact that several thousand citizens throughout the length and breadth of the State have petitioned the legislature that the works might be sold, while but a single remonstrance has been presented against such sale. Various considerations concur at the present time, which, to your committee, seem to show conclusively not only that a sale is highly politic, but almost a matter of necessity. From well-known causes, which it is not deemed necessary here to enumerate, the fact—the important fact—is now fully apparent, that the State has not the ability to complete any of the public works, or place them in a situation in which they would be most productive of revenue or prolific of benefit to the great interest of the State. Your committee do not doubt, that, as well to reduce the public debt and relieve the people in some measure from taxation, as to develop the resources of the State, by opening to them interior channels of communication and outlets to market, by which the rich products of our teeming soil may readily and at a cheap rate find a market, sound policy dictates a sale of all our works of internal improvement.

To such result had your committee arrived, when the House signified to the committee its pleasure that bills for the sale of the public works should be brought in with all convenient speed. The committee found great difficulty in maturing a plan for such sale, whereby a large portion, if not the whole of the moneys, expended on the several works

might be realized to the State, and at the same time the usefulness of the several works to the public be continued, and, if possible, extended and enlarged. The people have entertained high hopes of benefits to accrue to the State from the prosecution of these works, and they will very reluctantly see them pass from their hands without present advantage and prospect of future good. In our immediate vicinity, where their value is best known, no persons are found of sufficient ability to purchase and pay for these works, and it is a matter of difficulty and delicacy to present sufficient inducements to attract large amounts of capital from the East, and at the same time place the like guards and restrictions around the investment of such capital as are found in more populous and opulent districts of country.

The committee have directed their attention particularly in the first instance to the disposition of the Central Railroad as the most prominent and valuable of our public works, and that from the productiveness of which many hoped and expected and predicted, with great confidence, that we should be saved from onerous taxation on account of our public debt. The failure of the road to meet the expectations of its sanguine friends, arises, not of the lack of business to be done, but from the utter incapacity of a road of the light superstructure and rail found upon this road to transact the business offering upon the line of it. A heavy rail is indispensable, and the State has not the ability to provide such a rail. Doubtless, when the road shall be opened to Lake Michigan, with a proper rail thereon, it will be proven that the great natural advantages of this route, and the vast amount of business to be done upon it, have not been overrated. In preparing a bill for the sale of the road, the price to be obtained, the ability of those to whom it is offered to pay the same, and to complete and rebuild the road with a heavy rail, the time when the road shall be so completed and relaid, the protection to be provided for the people, and especially the agricultural interests, against exorbitant tolls, and the manner in which the State, at a future day, in case the transfer of this road to private hands should be attended with serious or unforeseen evils, could repossess herself of the road without injustice to those individuals who shall invest their fortunes therein, have claimed particular attention. The committee, reserving the State building at the Detroit depôt, and lot upon which it is situated, have placed the price at $2,000,000, which they deem to be a reasonable remuneration to the State for the same, and as much as has been actually expended by the State in the construction thereof. Besides, it is well known that the first fifty or sixty miles of the road is much dilapidated, and the superstructure and rail of so little worth that they must shortly be renewed the whole distance, together with many of the bridges on the route. The purchasers get no title until the whole purchase-money is paid to the State. The amount requisite to purchase and complete and renew the road with a heavy rail and a suitable supply of depôts, engines and cars, is estimated to exceed four millions. It is without precedent that any com-

pany has brought to the West such an amount of money to be invested in any enterprise. In looking through the length of the land, your committee find but one district of country in which capital to that amount can be well spared for investment at a distance, and but one class of men in that district whose vigilant and far-seeing eye would be likely to engage them in such an adventure. The men named in the bill presented are of that class of their ability to take and complete the road. No doubt is entertained, and your committee have strong grounds to believe that they will purchase the road on the terms proposed, if the bill should become a law in its present shape; but, in case material alteration is made, they cannot anticipate, with any confidence, such a result. Provision is made in the bill for completing the road to Lake Michigan and relaying the eastern portion of the road at an early day, under heavy penalties; and, that we may not be unnecessarily taxed by reason of roads of light structure, and insufficient for transportation of produce, the rail is to be of sixty pounds weight to the yard, which is better iron than is now found upon any road in the United States. To protect the people against unreasonable charges for freight and passengers, the maximum for passengers within the State is three cents per mile, and upon the great staples of produce and consumption—flour, grain, lime, plaster, salt, pot and pearl ashes, beef, pork, and wool packed in sacks—the tolls are limited to the average of tolls on the best New England roads upon the same articles; these rates to be reviewed and adjusted once in ten years, if the State desire it. This is at once putting our citizens in this new State upon a footing of equality with those of Massachusetts, where railroads are better conducted than in any other portion of the Union. If a sale is to be made, it becomes indispensably necessary to incorporate the purchasers, and invest them with adequate powers to complete the road, and to run it in successful competition with steamboat and other rival routes. Some few have supposed that the act investing any body of men with corporate franchises should reserve to the legislature an absolute power at any moment, with or without cause, to repeal the act and annul the corporate powers granted. The propriety of such a provision, in reference to moneyed incorporations, your committee do not deem it here necessary to consider, as they have no analogy to railroad companies. If the corporate powers of a bank are revoked, it can easily and expeditiously convert its promissory notes, bills of exchange, and bonds and mortgages, into money, and divide the proceeds amongst the stockholders, so that the effect is to return the money invested in the bank to the stockholders, and only to deprive them of the peculiar advantages of employing their capital in that particular manner which might accrue from the provisions of the charter of the bank. But very different is the position of a railroad company. The money of its stockholders has been expended in shaping the surface of the earth, in cutting down hills, in filling up valleys, in constructing expensive bridges, in laying deeply and securely in the soil the timber foundations, and in surmounting them with an iron superstructure that

no weight can crush, no speed of the ponderous train can start from its foundations, against which the elements war in vain; in planting the walls and raising the superstructures of stately and capacious depôts, in which may safely and conveniently be deposited for transportation the vast and accumulating products of our soil and industry, and in providing car-houses and machine shops, and other necessary structures upon their road.

Annul the franchises of the Railroad Company, and what becomes of all the moneys thus expended? Do they return to the stockholders? Not a dollar. If the corporate franchises are revoked, the land upon which the road is constructed reverts to its former proprietors or escheats to the State. The road in the eye of the law is part and parcel of the soil upon which it is built, and so are the depôts and car-houses, and machine-shops and bridges and other fixtures connected with the road, and all would go with the land. The whole investment of the stockholders would be a total and irretrievable loss—a ruinous and overwhelming sacrifice; and if a power of repeal is reserved in the act, the entire investment of the stockholders might be taken from them in an instant by an arbitrary act of legislature, under the impulse of momentary excitement, and with as little consideration as we vote an adjournment for dinner. The action of legislative bodies should ever have the impress of justice. Nothing can be just which involves such consequences. It would still be the iron heel of despotism, though veiled under the specious garb of popular liberty. Your committee have therefore come to the unanimous conclusion, that it would be unjust as well as impolitic to reserve a power of repeal without provision for compensation. Indeed, it would be but mockery to the wishes of the people to propose a sale with an unqualified power of repeal—a clog which the most superficial observer must see would totally defeat a sale. It is idle to suppose that men would come a thousand miles from their homes to embark their fortunes, to the extent of $4,000,000, when they would be subject at any moment to be deprived of the whole of it. Men of the prudence to accumulate fortunes do not hazard them upon such quicksands.

To protect the States from prejudice, from unforeseen contingencies, the right to revoke the corporate franchises with compensation—in other words, to purchase the road—has been reserved to the State; which right may be exercised at any time after twenty years by paying the company the market value, or at least the par value, of their stock, with a small additional per centage. It was thought but reasonable to give the company time to finish and rebuild their road and test its capacity before they should be compelled to part with it. To enable the company to protect itself from the effects of steamboat combinations, which had heretofore so much prejudiced the road and injured the State, the company is allowed to have eight vessels, which are intended for the navigation of Lakes Erie and Michigan, and to provide propellers, if deemed expedient, for Lake Ontario, through which many emigrants now find their way westward. The purchasers are

required to pay a State tax, in lieu of all other taxes, of one half of one per cent. on the capital stock paid in, including the $2,000,000 paid to the State for the first five years, and one per cent. after the first five years. This will secure to the State no inconsiderable revenue from the road; and as the expenditure on the road has been from the State treasury, it was deemed but just that the proceeds of the tax should accrue exclusively to the State.

The committee having duly weighed the matter, have instructed me to report herewith the accompanying bill to authorize the sale of the Central Railroad, and to incorporate the Michigan Central Railroad Company. Much deliberation has been bestowed upon its provisions, and it is thought to be carefully drawn and prudently guarded. The committee expect shortly to carry out the views herein expressed by reporting bills for the sale of the Southern Railroad, and the Clinton and Kalamazoo Canal, and to apply the proceeds towards the payment of the public debt.

(Signed) GEO. E. HAND.

The Select Committee consists of Messrs. Hand, chairman; Walker, Moran, Cole, Scott, Ransom, and Rice.

I hereby certify and return, that on the thirty-first day of March, A. D. 1854, Edwin Noyes, George Davis, and Joseph W. Smith, three of the witnesses above named; and on the first day of April, A. D. 1854, Charles G. Hammond, George E. Hand, and Samuel Stone, three other of the witnesses above named; and on the nineteenth day of said April said Edwin Noyes was recalled, and John M. Berrien, and Ivers P. Morris, the remainder of said witnessed, appeared before me, at the office of James A. Van Dyke, esq., in the city of Detroit, and were by me severally duly sworn to testify the truth, the whole truth, and nothing but the truth; that each of the foregoing depositions was committed to writing by me in the presence of the witnesses, signing the same respectively, and by me carefully read over to him, and signed by him in my presence.

I further certify, that the paper-writing hereto attached, marked "Exhibit A," is the same referred to in the deposition of George E. Hand; and the paper hereto attached, marked "Exhibit B," is the same referred to in the deposition of Ivers P. Morris.

ADDISON MANDELL,
Circuit Court Commissioner, Wayne county, Michigan.

Com'rs fees, $34 44.

And afterwards, to wit, on the sixteenth day of May, one thousand eight hundred and fifty-four, the said defendants filed in the office of the register of said court certain depositions, exhibits, &c., which depositions, exhibits, &c., are in the words and figures following, to wit:

Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY, complainant,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton, and Guy Foote, defendants.

To the Circuit Court for the county of Wayne, in Chancery:

One order having been entered closing the proof in the above-entitled cause, and due notice of such order having been given to the undersigned by the solicitors for the above-named defendants, I, the undersigned circuit court commissioner, in and for the county of Jackson, do hereby respectfully certify and return, that certain depositions, which are hereto attached, were taken before me at the times when my respective certificates at the foot thereof bear date, and that such depositions are all of the depositions taken in said cause before me, at times when the complainant and defendants appeared by their respective solicitors, or when, previous to taking the same, the party appearing furnished me with proof of the service of a notice to take such proofs; and further, that each of such depositions was taken down by me, and reduced to writing on the examination of such witnesses respectively, and corrected in their presence, and then subscribed by them, respectively, before me. I further certify, that a certain stipulation hereto attached, and a certain notice of a certain affidavit thereon, are the original stipulations, notice, and affidavit referred to in the heading of the deposition of John J. Adam, hereto annexed, and that the same were presented to me as my authority for taking such depositions, ex parte. I further certify that this paper, hereto annexed, and purporting to be a copy of an order to take proofs, with a notice at the foot, and an admission on the back thereof, and marked by me "Copy order to take proofs, notice, and admission, April 27th, 1854," was presented to me as a copy of the order entered under which proofs were proposed to be taken. I further certify that certain exhibits, which are referred to in the said depositions, are hereto annexed, and marked respectively "Exhibit B," "Exhibit C," "Exhibit F," and "Exhibit G;" that such exhibits are copies which have been made by me from certain printed documents, which were shown to the witnesses respectively on their examination, and that each of such copies has been carefully compared by me with its original, and found to agree therewith.

All which is respectfully submitted.

Dated at Jackson, May 15th, A. D. 1854.

EUGENE PRINGLE,
Circuit Court Commissioner.

Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY vs. THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Guy Foote, Amos Root, and Moses A. McNaughton. } February 10, 1854.

In this cause neither party having claimed an intention of examining witnesses in open court, and more than ten days having elapsed since the filing of replication to the answers of the defendants: It is ordered, on motion of Higby & Foote, solicitors for the defendants, that the testimony of the witnesses in said cause be taken before a circuit court commissioner within sixty days from the service of notice of this order on the solicitors for the complainant.

You will please take notice, that an order, of which the foregoing is a copy, has been entered in the book of common orders kept by the register of the above-named court.

HIGBY & FOOTE,
Sol'ts for Defts.

To VAN DYKE, FRASER, EMMONS & GRAY,
Sol'ts for Comp'ts.

We accept service of the above, Feb. 10, 1854.
VAN DYKE, FRASER & GRAY,
Sol'ts for Compts.

Copy order to take proofs, notice, and admission, April 27, 1854.
EUGENE PRINGLE,
Circuit Court Commissioner.

Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY vs. THE MICHIGAN SOUTHERN RAILROAD COMPANY, and others.

You will please take notice that we shall take the testimony of John J. Adam on the part of the defendants, before Eugene Pringle, esq., circuit court cemmissioner for the county of Jackson, at his office in the village of Jackson, on Tuesday, the 9th day of May instant, at the hour of ten o'clock in the forenoon of said day; the examination of said John J. Adam to proceed from day to day, as may suit the convenience of said commissioner.

You will also please take notice that we shall take the testimony of A. C. Smith and Robert P. Eldridge, on the part of said defendants,

before the circuit court commissioner for the county of Macomb, at the office of the said Robert P. Eldridge, in the village of Mount Clemens, on Thursday, the eleventh day of May instant, at the hour of two o'clock in the afternoon of said day; the examination of the said A. C. S. and Robert P. Eldridge to be continued from day to day, as may suit the convenienee of said last-named commissioner; all of said testimony to be used upon the hearing of said cause.

Dated Jackson, May 4, 1854.

HIGBY & FOOTE,
Sol'ts for Defts.

To Messrs. VAN DYKE, FRASER, EMMONS & GRAY,
Compl'ts Sol'ts.

Copy served this 4 May, 1854.

WILCOX & GRAY,
For Compl'ts Sol'ts.

STATE OF MICHIGAN, *County of Jackson, ss:*

Guy Foote, of said county, being duly sworn, says, that on the fourth day of May instant, he served on William Gray, esquire, a copy of the within notice by handing the same to said Gray in person; and at the same time said Gray endorsed on this paper the above acceptance of service, and signed the same in the presence of deponent, and then handed the same to deponent.

GUY FOOTE.

Sworn and subscribed before me, this ninth day of May, 1854.

EUGENE PRINGLE,
Circuit Court Commissioner, Jackson Co., Mich.

Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, et al.

For the purposes of the hearing and final disposition of the above-entitled cause, it is hereby stipulated and agreed as follows:

1st. It is admitted that during the negotiations for the sale of the Central road the provision contained in section five of complainant's charter, and set forth in the bill of complaint, was the subject of discussion between the committee of the legislature and the persons seeking to obtain the charter of the complainant, and that the latter said they would not purchase or pay the two millions of dollars unless said provision was inserted in the said charter.

2d. It is admitted that under and pursuant to the act loaning twenty thousand dollars to the Jacksonburg and Palmyra Railroad Company, and previous to the year 1846, pursuant to section nine of the act of June 22, 1837, loaning twenty thousand dollars, the State sold the said Jacksonburg and Palmyra Railroad, and at the sale bought in the same for twenty-two thousand dollars; and further, that the said

Jacksonburg and Palmyra Railroad was never finished, or completed, or built, beyond the village of Clinton, in Lenawee county; that no proceedings by or in any court were ever had to forfeit the charter of said company; that said company was regularly organized under its charter, and built the road up to Clinton, and from Clinton northwardly; did survey and establish the route of their road to Jackson, in Jackson county, but did not grade or build the same beyond or northwardly from said Clinton; and that between Michigan Centre and the village of Jackson, the line so surveyed and established by said Jacksonburg and Palmyra Railroad Company, crossed, and, for some portions of the way, ran upon the track now occupied by the track of the Michigan Central Railroad.

3d. It is admitted that, prior to the year 1846, proceedings were commenced by quo warranto, or otherwise, to forfeit the charter of the Erie and Kalamazoo Railroad Company; that after the act of 1846, amendatory of said charter, was passed, the assent was filed in the proper office accepting the said amendment pursuant to the requirements of said act; that said acceptance was under the corporate seal of said company, and signed by George Crane, president of said company, and by secretary of said company, who were the legally appointed and acting president and secretary of the said Erie and Kalamazoo Railroad Company. That the present owners of the Erie and Kalamazoo Railroad derive their title through a mortgage executed by the company in pursuance of authority of law upon said Erie and Kalamazoo Railroad and its franchises, which said mortgage was executed prior to said amendatory act of 1846, but was not recorded; that the mortgages in said mortgage named, or their assigns, have never in fact assented to the acceptance of said amendatory act.

4th. The due organization of the Michigan Southern Railroad Company under their charter within thirty days after the 23d of September, A. D. 1846, is admitted; also that the said company did not, within the six years specified in their charter, and the amendments thereto, build the said Branch road, mentioned in their charter, but that within one year from *from* the expiration of said six years, said company opened books and got subscriptions taken as provided in their charter, and that said subscriptions have been paid in; and that the road of said Michigan Southern Railroad Company runs from the city of Monroe, in the State of Michigan, westwardly through the village of Adrian, Hudson, Hillsdale, Jonesville, Coldwater, and thence on until it reaches the southern boundary of the State of Michigan, at the township of Bristol in the county of Elkhart, in the State of Indiana.

5th. It is admitted that in summer about one-half, and in winter more than one-half, of the freight and travel of the said Southern Railroad passes over the portion of the Erie and Kalamazoo road which lies between Adrian and Toledo to Tokee; and that by virtue of the arrangements with said company, said portion of said Erie and Kalamazoo road is run and operated by said Southern road, but that the Southern Company have not at any time used any influence whatever

to draw the trade of their said Southern road either to Monroe or Toledo, but that only such portion of the freight and passengers' travel passes to Toledo as the interest or convenience of the public demand.

6th. It is admitted that the said portion of the Erie and Kalamazoo road which comes northward from Toledo, in Ohio, connects at the village of Adrian, Lenawee county, with the said Michigan Southern Railroad by means of a switch, now so fixed that a train of cars coming from Toledo over said Erie and Kalamazoo road, and passing on to the said Southern Railroad, would pass westwardly on said Southern road, and could reach the Tecumseh Branch, hereafter mentioned, only by backing down five miles to where said Branch connects with said Southern road. That the said Southern Company have constructed, and now run, a branch from the said main road to Tecumseh, which branch connects with their main road by means of a switch about five miles east of Adrian, now so placed that a train of cars coming from Tecumseh on said Branch and passing on to the said Southern road, would pass on to the eastern terminus of said main road, and reach the said Erie and Kalamazoo road and pass over it to said Toledo, only by backing up said five miles to Adrian. And it is further agreed for the clear understanding of the said connections, the boundaries of the State, and the location of the places above mentioned, that reference be made to the plat filed with and annexed to the answer of the defendants.

It is further admitted, that to so change said switches and connections, as that cars coming from Toledo would pass to Tecumseh without backing, or from Tecumseh to Toledo, would involve a large outlay and great expense; and that said Southern Railroad Company *and that said Southern Railroad Company* have not threatened or taken any steps to make said changes, and that backing trains and engines is dangerous. That said Southern Railroad Company intend, unless restrained by the court, to continue the said Tecumseh Branch road northwardly from Tecumseh, through Clinton and Manchester, to the village of Jackson, in Jackson county, through which village passes the said Central road of complainants. That, for this purpose, they have acquired rights of way for almost the entire distance, and have let contracts for the grading of the entire tract, and openly avow their intention of building, constructing, keeping, running, and operating the same. That said branch road, as laid out and intended to be constructed and operated by them, does, westwardly of Wayne county, approach within five miles of the road of complainant, (the tract of which is laid on the line designated by their charter,) and does, for about ten miles within Jackson county, run within less than five miles of the complainant's road, and that only within said Jackson county does the Tecumseh Branch approach within five miles of the Central road. That, if permitted, when said branch is completed a train of cars can run directly and continuously from said Jackson over said branch road, and said Southern road to Monroe, but not to Toledo

without a change of connection or backing up five miles as aforesaid; and also that the gauges of all the roads are the same.

7th. It is also admitted, that the other defendants named in the bill acted with and aided said Southern Railroad Company in the measures taken by them for the construction of said branch road to Jackson.

8th. It is stipulated and agreed, that the foregoing be, and the same are hereby, admitted as facts simply for the purpose of this suit, with the right of either party reserved to object to the competency or relevancy of the same or any portion thereof, as evidence upon the hearing.

9th. And further, it is stipulated and agreed, and understood, that in reference to all other matters not covered by the foregoing, either party may take proofs before a circuit court commissioner upon giving to the solicitors of the other party four days' notice, specifying the office before whom the testimony is to be taken, and the time and place of taking the same, and the names of the witnesses.

VAN DYKE, FRASER & GRAY,
Detroit, January 25, 1854. *Solts. for Compl'ts.*

Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY, comp't,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton, and Guy Foote, defendants.

Depositions

Of witnesses produced, sworn, and examined in the above entitled cause, on the part and behalf of the defendants, in pursuauce of the order to produce proof in this cause, taken before Eugene Pringle, circuit court commissioner in and for the county of Jackson, the taking of which depositions commenced on the 27th day of April, 1854, at nine o'clock a. m.

Guy Foote, esq., appeared as counsel for the defendants, and G. V. N. Lothrop, esq., as counsel for the complainants.

Oliver C. Comstock, jr., being produced as a witness, sworn and examined on the part and behalf of the defendants, says: I reside at Marshall, in Calhoun county, and have been such resident for some seventeen or eighteen years. I was, at one time, a member of the Board of Internal Improvements of this State; I think it was from the 8th April, 1844, to the 8th of April, 1846. I was a member of that board in the capacity of acting commissioner. The duties of my office, as acting commissioner, let me to become familiar with the public works of the State. As acting commissioner I was familiar with the management of the Central Railroad, its running, and general expense of conducting it. I was also familiar with the expense of keeping the

Central Railroad in repair. As such acting commissioner I had personally the charge of the Central Railroad. The Southern Railroad was then actually superintended by a person appointed by me as such commissioner. As such acting commissioner, and as chairman of the Board of Internal Improvements, I made the report to the legislature *of* entitled "Joint Document No. 4," and which has heretofore been made *made* an exhibit in this cause, in the testimony of John J. Adam, and marked "Exhibit 6"

The complainant's counsel objected to the introduction of such exhibit as incompetent testimony, and also to the introduction of testimony in regard thereto; and the testimony is taken, subject to such objection. I drew up that report and submitted it to the board for their approval. That report was approved and signed by them. So far as could be ascertained, the statement in that report, in regard to the property of the State and the estimate of its value therein contained, are true and correct, so far as I know. Everything there is put down correctly, so far as it could be ascertained from the books in my office, and by comparison with the books in the office of the auditor general. As such acting commissioner I had the letting of some of the contracts for the building of the Central Railroad. I let them for the building of that road, from Marshall to Kalamazoo, with the exception of the grading of the tract. I think the Central Railroad was as well built as most roads built with a strap rail at that time. Very little of the track was graveled, but surface earth merely was thrown up to make the track. I should also say that the rail was rather light, and some of it was second-handed. The iron spikes and engines, used on the Central Railroad, were usually bought at cash prices. Cash, when on hand, and the evidences of State indebtedness, based upon the earnings of the road, were used to purchase these things. From my knowledge of the Central Railroad, at the time it passed from the State to the complainant, I should consider that it was worth all the State got for it.

Question. What was the general impression in the State in regard to the value of the Central Railroad at that time, as far as you can judge?

(Objected to by the complainant's counsel, and answer taken subject to the objection.)

Answer. It stood in high favor. It was generally deemed to be a work, the earnings of which when completed would ultimately pay the interest on the State indebtedness.

The defendants' counsel here introduced a printed book, marked on the book "Senate and House Documents, 1846," and referred to that part of the book marked "Senate Doc. No. 21," a copy of which is hereto attached, and marked "Exhibit F," to the introduction of which the complainant's counsel objected, and the same is received and copied, and such copy marked as an exhibit, subject to such objection.

The proposition mentioned in such document, copied in "Exhibit F," was made by the persons whose names appear at the foot of the

document, and so far as I know it was made in good faith. I know that Messrs. Jarvis Hurd, C. T. Guhorn, and A. L. Hays, three of the persons making the proposition, were responsible persons. The proposition was submitted to the Board of Internal Improvement.

All the above from the minute of the objections was objected to by the complainant's counsel, and was taken subject thereto.

No effort was made by me, and no effort, to my knowledge, was made by any other member of the board to make the earnings or receipts of the Central Railroad appear larger than they really were.

OLIVER C. COMSTOCK, JR.

Taken, read over, corrected, subscribed and sworn to, April 27th, 1854, before me,

EUGENE PRINGLE,
Circuit Court Commissioner.

The witness, Oliver C. Comstock, jr., being cross-examined by the complainant's counsel, says: At the time the Central Railroad was sold to the complainant, the superstructure from Detroit to Dexter was in very bad order, and the iron was generally worn out. The depôt at Detroit, the eastern terminus, was entirely inadequate; there was no building for the housing of cars. As a general thing, the right of way for the road where it was built was secured, but in many instances it was not secured. I had very frequent occasions to examine in regard to that matter, on the western part of the road from Jackson west to Kalamazoo. From Ypsilanti to Dexter the road was very crooked, too crooked, I think, for a passenger train to run upon with the rapidity it ought to, but I think it would do very well for freight cars if there had been a "T" rail. estimate, upon my examination in chief of the value of the Central Railroad, I referred in my own mind to its value under a charter with franchises sufficient to run it, and considered as the route for the great channel of communication through the central counties of the State. It was at that time the great route for communication across the State. The greater part of the iron spikes and engines bought for the Central Railroad was paid for in the evidences of State indebtedness. I cannot now approximate to the amount of such purchases made while I was in office. I have no data from which to refresh my mind, but they were very large. I think I could have done some better in making such purchases with the ready money, but how much better I do not know. The financial condition of the State was pretty hard at the time the Central Railroad was sold, but I think we could have "shinned it" a little longer if it had not been for the State constitution, for I think we could have made a loan if it had not been for the prohibition in the constitution as amended. The State could, I think, at the time of the sale have made a loan for ninety cents on the dollar, or more. I do not remember the market value of the recognised bonds at the time. I had a general knowledge at the

time of the sale of the financial condition of the State; and the board of internal improvement recommended the sale of the road.

OLIVER C. COMSTOCK.

Taken, read over, corrected, subscribed and sworn to, April 27th, 1854, before me,

EUGENE PRINGLE,
Circuit Court Commissioner.

Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY, complainants,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton, and Guy Foote, defendants.

Deposition

Of witnesses, produced, sworn, and examined in the above entitled cause, on the part and behalf of the above named defendants, in pursuance of a stipulation made between the said parties by their respective solicitors, which stipulation is hereto annexed, taken before Eugene Pringle, circuit court commissioner in and for the county of Jackson, in the State of Michigan, the taking of which depositions commenced on the 9th day of May, A. D. 1854, at 11 o'clock, a. m.

Guy Foote, esq., one of their solicitors, appeared as counsel for the defendants, and presented the stipulation above mentioned and hereto attached, and also a notice, admission, and affidavit, which are also hereto attached.

No appearance for the above named complainants.

John J. Adam being produced as a witness, sworn and examined on the part and behalf of the defendants, says: I am a resident of Tecumseh, in the State of Michigan; I have resided in the county of Lenawee, in this State, for more than twenty-two years; I was a member of the convention to form the first constitution of this State in the year 1835, and for the next three years secretary of the Senate of this State. In 1839 I was a member of the house of representatives of this State, and in 1840 and 1841 a member of the senate of this State. From January, 1842, to the last of May, 1845, I was State treasurer of this State. From June 1st, 1845, to about February 20th, 1846, I was auditor general of this State. In 1847 I was again a member of the house of representatives. From March, 1848, to January, 1851, I was again auditor general. During the time when I held the office of State treasurer, I was *ex officio* a member of the Board of Internal Improvements of this State, and, as a member of such board, I signed the reports made to the legislature. During the period when I was a member of the board, such reports were generally drawn up by the

acting commissioner after consultation with the full board. All the proceedings of that board were usually discussed and acted upon by all the members thereof. As one of such board, signed the report marked "Joint Document, No. 5," to the legislature of 1844, a copy of which is hereto attached, and marked "Exhibit B."

My situation as a member of that board led me to become generally familiar with the management of the public works of the State, and especially with that of the Central Railroad; the statement made in such joint document, No. 5, above referred to of the property of the State, is to the best of my knowledge and belief a correct statement as near as could be ascertained. The statements in such reports of the nett receipts of the Central Railroad for the year ending November 30th, 1843, is a correct statement of what such nett receipts were. I was a member of the Board of Internal Improvements of this State for the year ending November 30th, 1844, and as one of such board I signed the report marked "Joint document, No. 4," to the legislature of 1845, a copy of which is hereto attached and marked "Exhibit G." The statement made in such report, and accompanying the same, ("Joint document, No. 4, of 1845,) is a correct statement of the property of the State, as near as the same could be ascertained. The statement contained in such report of the nett receipts of the Central Railroad for the year ending November 30th, 1844, is a correct statement of what such nett receipts were, as near as the same could be ascertained. In making up the amount of nett receipts of the Central Railroad, no attempt was made on the part of the board at any time while I was a member of it, to make such receipts appear larger than they really were. Some conversation was had among the members of the board as to whether they gave a correct view of what the profits were, and it was contended on the one hand, that the wear and tear of the road and its consequent depreciation in value ought to be taken into the account; and on the other hand it was contended, that the carrying of freight, iron, and other materials for the construction of the road ought to be considered as a part of its earnings, and finally one thing was allowed to balance or offset the other, and nothing was stated in the account as to either the depreciation of the value of the road or the earnings made by it for the State, except the wear of the iron; it was considered that the expenditures for repairs kept the superstructure in about as good a condition at the end of each year as it was at the beginning of each. I do not recollect of having made any statement to any one while a member of the board, to the effect that it was desirable to make the nett receipts of the Central Road appear as large as possible, and I think that I did not. I know that my efforts individually as a member of the board were to keep the statement of the nett profits of the road as low as the facts would warrant. I did not know when a member of that board, or while a State officer, of any attempt being made by the acting commissioner, or by any member of the board, to make the profits or nett receipts of the Central Railroad appear greater than they really were. I was consulted in regard to making up the annual re-

port of the Board of Internal Improvement for the year 1845, being the last before the sale of the Central Railroad; I having been a member of that board about half of the year, and auditor general the rest of the time. The report to which I refer is "Joint document No. 4" of the legislature of 1846, a copy of which is hereto attached and marked "Exhibit C." The statements accompanying such report of the property belonging to the State, and the estimate of the value thereof, were true and correct statements at that time, as I believe; and the statements of the costs of the Central Railroad, of the receipts from it, included in the body of such report, are as nearly correct as could be ascertained from the books in the office of the auditor general, or in the internal improvement office. The Central road was built by means of cash from Detroit, about as far west as Dexter, and for cash prices as far west as Jackson; and beyond Jackson the contracts were let on about as favorable terms as if payment had been to be made in cash. The rolling stock and furniture of the road were mostly paid for in cash, and at cash prices. The scrip received on the road was used in paying for purchases at home, and in paying the running expenses, and to deposit in the State treasury; the greatest depreciation on scrip used by the State in making purchases at home, was in 1842 and 1843, and of about twelve and a half to fourteen per centum. From what I know of the Central Railroad at the time of the sale, I thought that any company which should buy it ought to pay its entire cost, with about ten per centum additional to cover interests; when part of the roads were being constructed, in my consultation with the officers and with members of the legislature, I frequently expressed doubts as to whether the Southern Railroad could ever be sold for what it cost, but the State officers generally, including myself, always supposed that the Central Railroad was abundantly worth and might readily be sold for all it had cost to build it. My idea of the value of the Central Railroad, and my estimate of what it would be worth to a company, did not include any estimate of the value of exclusive privileges which should be granted in the charter to the company which should buy it. When I was auditor general of the State, when Mr. John W. Brooks came on, representing himself as agent for those who wished to purchase the Central Railroad, he came to the auditor general's office, and examined with me the books of that office as to the mode of keeping the amount of the costs of the road; and in conversation with him at that time, I endeavored to impress upon him the fact that the Central road was worth all it had cost or more, by reason of its favorable location and its prospects of revenue, when extended to Lake Michigan; from the year 1843 or before, till they were sold, I had always been in favor of the sale of the Central and Southern Railroads, and had frequently conversed with members of the legislature and others about it. In the year 1844 I had a consultation with Mr. D. C. Walker, chairman of the committee of ways and means in the house of representatives of that year, who, during the session, introduced a report recommending, and a bill providing for, the sale of both roads to one company. The matter was one of which

I considered of much interest and importance to the State, and was one on which I had reflected as much as upon any matter of State policy. I thought at the time of the sale of the Central road, and I think that an equal or a larger sum might have been obtained from other parties, and, especially, if they could have had the privilege which the present company did have of paying in the evidences of State indebtedness, which were then worth about seventy cents on the dollar.

JOHN J. ADAM.

Taken, read over, corrected, subscribed, and sworn to, May 9th, A. D. 1854, before me,

EUGENE PRINGLE,
Circuit Court Commissioner.

"Exhibit B," shown to the witness, John J. Adam, on his examination, and referred to by him, May 9th, A. D. 1854, being a copy of a certain printed document then shown to him, made by me.

EUGENE PRINGLE,
Circuit Court Commissioner, &c.

(Copy.)

Joint Doc. No. 5.—Legislature, 1844.

Annual Report of the Board of Internal Improvement.

OFFICE INTERNAL IMPROVEMENT, DETROIT,
Dec. 15th, 1843.

To the honorable the Legislature of the State of Michigan.

The undersigned, commissioners of internal improvement, have the honor respectfully to submit their annual report.

During the present year, the public works in the course of construction have steadily progressed, but not with the rapidity that the public or the commissioners have desired. The low state of the credit of the warrants with which payments are made, prevented the contractors from carrying on the works as rapidly as anticipated, until the public lands were subject to entry; since that time the credit of the warrants have improved, so much as to enable the contractors to go on with their work with more rapidity, and they have, since that time, been progressing with energy with the appropriation made by the last legislature; the Southern Railroad has been completed to Hillsdale, beyond which point no appropriation had been made. The Central Railroad will be completed to Marshall, in the spring, and will be prepared for the laying of the superstructure as far as Kalamazoo, in June next. To complete the road to that point, a further appropriation of seventy-five thousand dollars will be necessary to prepare the road for the iron, and an appropriation for the purpose of procuring the iron and spikes that will be required.

Proposals were advertised for and received, for the purpose of bringing the Clinton and *and* Kalamazoo canal into operation, but the proposals were higher than the estimate of the engineers, and under the

act making the appropriation, the commissioners were prohibited from letting contracts at a price beyond the estimate; the price of warrants have advanced so much as to make them desirable to contractors, and men can now be found in abundance, who will work for them, for the purpose of buying the State lands; if the restrictions should be taken off from the appropriation, the work can be completed for the amount appropriated, and a small amount in addition, to cover the expenses consequent upon the increased injury which the work sustained by the last spring freshets. This work is rapidly decaying, and it is hoped that the legislature will adopt the proper means for placing it in operation, so that the portion of the work now nearly completed may be preserved from ruin, and the inhabitants of that portion of the State through which it runs, be relieved from the mortification of seeing a work on which such a large amount has been expended entirely neglected, and deteriorating in value every year, more than it will cost to place it in a situation that will at last preserve it from decay, and probably render it of some value to the State.

The unusual stage of high water in the St. Joseph river, during most of the year, prevented the expenditure of the appropriation made for that work. The commissioners were unable to do anything more than to have a plan prepared for its improvement, which they believe can be completed during the next season, and which, in their opinion, will be of great benefit to the navigation of that river.

The continued increase of the receipts of our railroads, notwithstanding the disadvantage under which they have been conducted, from the want of funds necessary, and cars upon them so as to do all the business that offers to advantage, is evidence that their value has not as yet been fully estimated; a large portion of the stock on the roads has been purchased from their receipts, and as a large portion of those receipts has been in State scrip which could not be used to advantage for that purpose, the roads have, at no time, been furnished with stock sufficient to develop their full resources, but this difficulty is now nearly obviated, and the road will, for the future, give an income that it is believed will relieve the State from the liabilities incurred from their construction.

The works on which the board have now any authority to make any further contracts, are for the extension of the Central Railroad to Kalamazoo, for the purpose of placing in operation that portion of the Clinton and Kalamazoo canal now nearly completed, and for the improvement of the St. Joseph river.

If the legislature should think proper to give the board the necessary authority, these works can all be completed, as far as the legislature of last winter contemplated, and put in operation in 1845; and as the interests of the public debt is to be paid in January, 1846, from the receipts of the public works, it is of great importance to have them completed, so far at least as already authorized, as speedily as possible.

That the Central Railroad, when completed to Kalamazoo, will

itself pay the interest on the State debt, is now almost certain; that, being so very desirable, should induce its accomplishment as soon as practicable.

These works being now the only ones in course of construction, the commissioners, believing it important to have them completed as soon as the resources of the State will permit, with great deference to the judgment of the legislature, earnestly recommend the necessary appropriation for that purpose.

While the board deem it their duty to present such reasons for the completion of works given them in charge, as appears to them to be correct, they do not feel at liberty to ask for appropriations for the extension of any of the works, although they are of the opinion that the interest of the State requires their extension, and that they will eventually be completed; but until our resources are more ample the commissioners are of opinion that their extension will be more rapid, if too much is not attempted at ; and under authority of an appropriation made by the last legislature, arrangements were made for the purchase of iron and spike sufficient to complete the Southern road to Hillsdale, and the Central road to Marshall; a portion of this iron was purchased of Messrs. Bigelow and Mattison, being part of a parcel of iron imported by the State of Illinois some years since; it was purchased at $48 per ton of 2,000 lbs. delivered in Michigan; a contract for the balance required was made with the Great Western Iron Company, the iron to be manufactured by them, and to be delivered at Beaver, Pa., at $60 per ton of 2,240 lbs. Before any of the iron was delivered under this contract the company failed, and the iron passed into the hands of their creditors, who delivered the iron then manufactured on the same terms, and are now completing the balance of the amount required, the whole of which will, without doubt, be delivered in April. All the iron received is of a superior quality, and fifty per cent. heavier than that previously used; it will add much to the strength of the road on which it is placed.

The tariff of 1842 placed a cash duty of twenty-five dollars per ton on railroad iron, which prevented the commissioners from importing it, as they were unable to make payment of so large a proportion of the cost of the iron on its arrival in this country; the low price of iron in England would have enabled them to have imported it to great advantage, had it not been for the heavy duty placed upon it for the first time by the act of 1842. This duty is a serious obstacle to the extension of our railroads, and the commissioners would respectfully suggest to the legislature the propriety of endeavoring to have the tariff act so modified as to allow its importation free of duty as heretofore, particularly for roads which had been commenced while such permission was allowed.

Central Railroad.

There has been received from this road, for the year ending November 30th, 1843—

For transportation of 30,643 passengers		$52,698 85
U. S. mail		5,000 00
Sales of old iron		324 00
Carried forward	$58,022 85	
8,929,688 lbs. merchandise		26,012 85
1,920,823 " agricultural products		3,353 20
1,081,267 " ashes		2,229 95
137,575 bbls. flour		46,283 89
61,962½ bushels of wheat		6,821 31
1,758 barrels pork		1,110 50
8,012 " salt		4,520 40
650 " whiskey		335 11
95,672 lbs. wagons and coaches		570 20
74,560 feet lumber		277 14
829½ M shingles		347 79
Domestic A		101 31
		$149,986 51

Amount paid for expenses, running the road, and making repairs.

Repairs of road	$24,213 18	
machinery and cars	18,477 26	
Pay of engineers and firemen	7,233 73	
Expense of warehouse depôt	3,676 60	
Wood	2,480 57	
Oil	2,315 95	
Expense of freight and pass. trains	7,174 94	
Dearborn Station	939 10	
Wayne "	869 79	
Ypsilanti "	1,295 74	
Ann Arbor "	1,618 99	
Dexter "	949 37	
Davidson "	617 04	
Grass Lake "	997 82	
Jackson "	2,000 12	
		$74,960 20
Nett profits		$75,096 20
Add the amount on hand date of last report		2,063 55
		$77,089 86

Which sum has been deposited as follows:

Paid State treasurer	$32,074 21	
on purchase of iron	24,333 13	
" locomotive	7,374 58	
building new cars	11,498 53	
on account construction	1,809 41	
		$77,089 41

The unexampled severity of the last winter, by which the navigation of the lakes were closed for about five months, operated much to the detriment of the road; during several of those months, the snow and ice prevented the trains from carrying the freight that was offered, and as the traveling by sleighing was good during most of the winter, the produce, which usually comes over the road in the spring, was sent in by sleighs, and the road lost a large amount of business that in ordinary seasons it would have been enabled to do. Since the opening of navigation in May last, the receipts of the road are much larger than they were for the same period of the previous year; and notwithstanding the severity of the winter weather, which increased the expenditures, the road has been more productive than heretofore, and, with the seasons we usually have, would, it is believed, have equalled the expectations of the most sanguine friend of the work. That portion of the road which has been run during the year extends but eighty miles from Detroit, and cost eleven hundred thousand dollars, and it has yielded the present year more than six and three-quarters per cent. upon the cost.

For the ending November 30th, the engine with trains of cars have run 106,121 miles. The whole expense of running the road, including all expenditures for repairs of road, and of machinery, and cars, having been $74,960 20, shows the expenses of running an engine and train to have been 70⅔ cents per mile.

Statement of Monthly Receipts for the two past years.

December, 1841,		$2,960 72	December, 1842,		$5,347 91
January, 1842,		6,020 95	January, 1843,		4,254 69
February,	"	5,175 31	February,	"	2,778 92
March,	"	6,693 76	March,	"	4,027 02
April,	"	11,409 45	April,	"	5,589 33
May,	"	13,859 26	May,	"	14,172 03
June,	"	10,964 38	June,	"	14,647 26
July,	"	9,373 01	July,	"	10,900 83
August,	"	10,702 99	August,	"	12,134 23
September,	"	18,798 58	September,	"	24,027 90
October,	"	24,778 17	October,	"	32,732 98
November,	"	16,161 75	November,	"	19,373 41
		$136,898 33			$149,986 51

Statement of nett revenue of the road since first opened.

1838	-	$37,283 55	1841	-	$25,655 30
1839	-	16,703 66	1842	-	63,075 96
1840	-	20,637 41	1843	-	75,026 31

Southern Railroad.

There has been received from this road, for the year ending 30th November, 1843:

For transportation of	6,271 passengers	$5,038 18
"	95,120 bu. wheat	7,143 82
"	1,814 712 merchandise	3,379 67
"	17,788 bbls. flour	4,738 18
"	2,284 " salt	1,079 58
"	536 " pork	205 38
"	89,622 lbs. fruit	172 46
"	61 bbls. cider and beer	30 32
"	44,986 lbs. hides	89 64
"	30,680 lbs. coal	24 05
"	189,433 lbs. furniture	323 66
"	130 bbls. whiskey	38 04
"	524,219 bbls. ashes	1,357 17
"	150 M shingles	41 82
"	9 bbls. fish	3 44
"	11,262 lbs. wagons	43 73
	Carried forward	$23,709 12
	Brought forward	$23,709 12
"	111,425 lbs. pig iron	104 16
"	20,455 feet of lumber	55 21
"	5,500 lbs. butter and cheese	6 79
"	22,330 lbs. lime	31 86
"	13,125 lbs. stone	16 11
"	79,922 lbs. miscellaneous articles	107 22
"	8,380 lbs. plaster	10 03
		$24,040 50
Rec'd for old bell sold		$20 00
" one bbl. flour unclaimed		4 00
		$24,064 50
Balance on hand date of last report, in hands of superintendent		$195 81
		$24,260 31

Which sum has been expended, as follows:

For repairs of road	$7,886 00
Building and repairs of cars	6,651 92
Construction of road	1,479 12
Pay of engineer	1,623 76
Wood	1,264 32

Oil	$474 49
Expenses Monroe depôt	1,290 78
Ida station	277 47
Palmyra station	193 44
Petersburg "	194 25
Adrian "	630 50
Pittsford "	7 50
Clayton	123 33
Hillsdale	196 10
Freight and passenger trains	1,978 02
	$24,261 00

Of the sums expended as above, $7,906 85 were nett proceeds, and were expended as follows:

On account of building new cars	$5,050 00
On account of construction of road	1,479 12
In payment of claims (old)	1,377 73
	$7,906 85

This road was ironed and put in operation to Hillsdale, sixty-eight miles from Monroe, early in October, since which time all the locomotive power on the road has been fully employed, and a large amount of produce remained on hand at the different points on the road, which it was impossible to transport in time for shipment to the East, for want of machinery and cars. The limited means the board then had control of, not enabling them to provide in season the necessary facilities for doing all the business that was offered, two new locomotives have been placed upon the road, and a sufficient number of cars will be purchased in season to do all the business that offers during the coming year; the difficulties which have heretofore prevented the road from producing any revenue have now been principally overcome; the facilities for shipment of produce at its eastern termination have much increased, and by its extension west of Adrian the competition with the Toledo road is obviated.

The business of the road for the ensuing year will continue to increase, and as necessary facilities for transacting it will be prepared, it is confidently believed that the receipts of the road will amount to $50,000 during the year, all of which, over the amount necessary for the running of the road, will be required to be expended in placing the road in proper condition to do so large an amount of business.

The timber used in the construction of the eastern section of the road was of a kind unsuited to the purpose, and will have to be replaced; this unavoidable expenditure, together with the amount required for furnishing cars for the road, will prevent the payment of any revenue into the treasury from its receipts during the year, but the income will

place the road in such a condition that for the next ensuing year it can be relied on for a portion of the amount for which the receipts of the public works are pledged.

The advantage of extending public works of this kind through sections of the State where there are no other means of transporting produce, is illustrated by the extension of this work, particularly in the county of Hillsdale. The improvements in that county, which have been made in consequence of the extension of this work, have been very extensive. Business men are continually settling there, farms are improving rapidly, and the increased amount of produce raised will make a great addition to the amount of exports of the State. The use of horse-power on the La Plaisamee Bay branch of the road having been found to be more expensive than the business warranted, the proprietors at the bay were authorized to use the road for the transportation of freight to and from the depôt at Monroe, to meet the trains running upon the Southern road, the privilege to continue until the legislature or the Board of Internal Improvement should otherwise determine.

The report of John M. Berrien, chief engineer, accompanies this report, and is referred to to show the progress of construction of the Central Railroad; all of which is respectfully submitted.

THOMAS W. WELLS,
ROBERT P. ELDRIDGE,
JOHN J. ADAM.

Amount charged against the Public Works for the year ending November 30th, 1843.

	Am't expended.	Bal. of appro'n.
Central Railroad	$129,671 83	$195,677 89
Southern Railroad	20,893 10	
Clin'n and Kal'oo canal	8,234 97	17,485 84
Northern Railroad	300 08	40,041 29
Imp. Grand and Maple river	737 69	6,773 57
Det. & Gd. River road	575 88	1,201 34
Canal Gd. R'r rapids	6 00	24,780 64
Huron Branch River road		19,047 66
Imp't St. Joseph river		26,165 69
Saginaw turnpike		44 09
Northern "		30,000 00

Statements of property of the State of Michigan under charge of Agents of the Board.

In office of Internal Improvement, Detroit:

2 writing desks and 1 counter.
1 iron safe, with two sets of keys.
1 set of books of account of Board of Internal Improvement.
1 " " " acting commissioner Central R. Road.
1 " " " Detroit & St. Joseph R. R. Company.

1 pine drawing-table, 3 stoves and pipe, 1 basin.
2 fire shovels and one pair tongs, 4 paper cases.
1 ash kettle and one candlestick.
2 Farmer's maps of Michigan, 1 do. of Detroit.
1 Lay's " U. States.
Lot of maps and profiles of the different public works of Michigan.
Do. of stationery of all kinds.
Sundry public documents and papers, contracts, vouchers, reports, &c., &c., session laws from 1837 to 1843, inclusive.
4 levelling instruments and staffs.
1 surveyor's compass and chain, 1 transit.
3 measuring tapes, 4 bookcases and chests.
2 writing stools, 12 chairs.

Under charge of George Gibson, Sup't of Car Shop, Central Railroad:

10 work benches with vices, 4 do. without vices; 26 planes, 4 saws, 25 augers, 8 wrenches, 1 board rule, 50 grs. screws, 4 kegs nails, 1 steel and trying square, 1 stick, 2 hand axes, 1 iron furnace, two glue kettles, 2 glue brushes, two white lead brushes, 2 stoves and pipe, 1 grindstone, 12 car-door locks, 25 sash lifts, 10 papers brads, 12 do. tacks, 4 hammers, 1 keg white lead, 28 hand-screws, 16 trussels, 4 trucks and rollers, 1 crane, windlass and tackle, 3 single blocks, 1 small tackle, 11 yards canvass, 2 doz. draw bow pins, 10 saw files, 11 flat files, 2 sides trimming leather, 4 yards lace, 20 yards fringe, 2 trimmers' punches, 19,000 feet of lumber, 4 large passenger cars, 5 small do.; 4 large freight cars, 69 small do.; 8 large freight racks, with oil-cloth covering; 1 frame for large passenger car, 1 snow plough.

Under charge of W. F. Chittenden, Superintendent Machinery, Central Railroad:

6 locomotive engines, 3 sets of blacksmith's tools, 250 bu. charcoal, 200 do. stonecoal, 1 ton spring steel, 1½ do. bar iron, 3½ do. old iron, 2 do. old broken castings, 2 do. broken springs, 1 portable forge, 3 screw plates, with taps and dies; 2 sets of lathe tools, 3 stoves, 1 grindstone, 4 pairs of extra driving wheels, cranks and shafts, 2 pair locomotive truck wheels, 2 extra cranks, 27 car axles, with wheels out of repair; 4 new pair car wheels and axles, 3 new axles, 2 wheelbarrows, lot of patterns, 3 locomotive engine bells, 1 joiner's bench, 2 large oil cans, 12 small lamps, 3 globe do.; 80 gal. sperm oil, 1 bbl. lard, 2 picks, 1 shovel, 1 spade, 3 buck saws, part of a press for car wheels, 2 large screws, 1 copper pipe, 1 old pair driving wheels and crank from old engine Pittsburg, 40 cords wood, 1 turning lathe, with small tools; 7 vices.

In charge of Weighmasters, Detroit Station:

2 horses, 2 sets of harness, 1 whip, 1 whippletree, 1 whippletree chain, 1 cart, 1 currycomb and brush, 15 bushels oats, 300 lbs. hay, 1 table, 2 chairs, 1 stove and pipe, one box for papers, 1 chain, 4 trunks, 2 bridges, 1 platform scale, 1 clock.

Inventory of State property in use on the Central Railroad from Dearborn to Jackson:

Thirty-seven shovels and spades, 14 picks, 20 axes, 19 iron bars, 32 spike and nail hammers, 3 cant hooks, 10 cold chisels, 15 punches, 6 wedges, 13 wood and repairing cars, 4 horses and harness, 2 wagons, 25 buck and hand-saws, 19 stoves and pipe, 12 pails, 16 wheelbarrows, 6 grindstones, 10 lanterns, 7 candlesticks, 18 chairs, 1 oil can, 4 platform scales, 3 saw-sets, 8 tables and desk, 3 pairs shovel and tongs, 7 inkstands, 2 drills, 1 square, 14 spike punches.

Under charge of Engineer Department, Central Railroad:

Four transits, 5 levels, 6 levelling rods, 2 compasses, 3 chains, 3 flag-staffs, 2 axes, 3 tin map cases, 2 hatchets, 1 stove and pipe, 1 drawing-table, 6 chairs, 1 writing desk, 2 paper cases, 2 inkstands, 1 pail, 2 small boxes, 1 box drawing instruments, (incomplete,) one ivory scale, 8 rules, 4 triangles.

In Improvement of St. Joseph River:

1 snag machine, 2 yawl boats, (1 old,) 4 chains, 8 pieces rigging, 9 poles, with sockets; 2 pair nippers for taking out rocks, 1 pair large nippers for taking out logs, 2 + cut saws, 1 frame, 1 sledge, 1 eye-bolt set, 2 iron blocks and shines, 5 axes, 2 boat-hooks, 4 oars, 1 grindstone, 1 anchor, 1 pair double blocks, lot of old iron, 1 cabin scow, 1 cook stove and furniture, 3 jugs, 2 stone jars, 2 tin pails, 2 oil cans, 1 tub, 2 tin pans, 1 coffee-pot, 2 dishes, 11 bowls, 8 knives and forks, 12 cups and saucers, 12 spoons, 1 coffee-mill, 10 bedticks, 10 pillow-cases, 20 blankets.

Inventory of property on Southern Railroad at Monroe office and at Monroe.

1 black-walnut table, 1 covered table, large writing table, 1 writing case, 1 pair shovel and tongs, 12 chairs, 1 inkstand, 2 sand boxes, 1 wafer box, 1 letter stamp, 3 rules, 1 ream foolscap paper, 1 ream letter, 1 journal, 2 day books, 4 ledgers, 2 blank books, 2 freight books, 1 passage book, 100 quills, 1 writing desk, two tin folders, 1 clock, 1 lot blank accounts, 1 lot of pay rolls, 2 candlesticks, 1 pair snuffers, 1 water pail, 1 tumbler, 3 brooms, 6 railroad brooms, 6 sticks sealing wax, 1 lot tickets, 1 iron fender, 2 spit boxes, 4 bottles ink, 1 desk stool, 1 long table, 1 oil can, 1 oil jug, 1 pair andirons, 60 car locks, 1 surveyor's chain, 1 stove and pipe, 2 horses, 2 one-horse harnesses, 4 lots of shafts for horse carts.

On Road:

3 locomotive engines, 1 locomotive engine old and unfit for use, 4 passenger cars, 25 covered freight cars, 4 4-wheeled racks, 1 8-wheeled rack.

In Machine Shop at Monroe:

2,600 lbs. spring steel, 1,300 lbs. bar, round and band iron, 1,540 lbs. new casting, 5,400 lbs. old castings, 2 smith's bellows, 2 anvils, 2 vices, 3 screw plates, 7 pairs dies, 23 taps, 14 files, 2 squares, 3 sledges, 5 hammers, 21 swedges, 7 chisels, 21 pair tongs, 15 heading tools, 9 punches, 2 drill stocks, 10 drills, 1 turning lathe, 1 band wheel, 2 stoves, 1 grindstone, 1 patent scale, 1 pair steelyards, 300 bu. coal, 4 large oil cans, 1 coil packing, 26 kegs spike, 6 benches, 5 auger bits, 81 patterns, 3,000 feet of pine lumber, 4,027 feet ash lumber, 268 lbs. brass castings.

Tool cars and tools on Road:

11 repairing cars, 10 sets repairing tools, 11 saws for sawing wood at station, 1 grindstone for repairs at Petersburg.

At Adrian office:

2 stoves and pipe, 4 chairs, 1 desk, 1 table, 1 inkstand, 1 shovel, 1 pair tongs, 3 office books, 2 candlesticks, 1 globe lamp.

At Hillsdale office:

1 box stove and pipe, 1 case for papers, 2 lamps, 2 candlesticks, 2 globe lamps, 1 bbl. oil, 112 cords wood, 1 horse, 1 harness, 3 wood saws, 1 axe.

Report of Superintendent Southern Railroad to the Board of Internal Improvement.

The undersigned has the honor to report, that the receipts on the Southern Railroad for the year November 30th, 1843, for the transportation of freight and passengers, are - - $24,040 50
Cash on hand December 1st, 1842, - - - - - 195 81
One bell sold, - - - - - - - - - 20 00
One bbl. unclaimed flour sold, - - - - - 4 00
$24,260 31

There has been expended for current expenses, and in payment for construction, building cars, and on old debts, as follows:

Repairs of road, - - - - - - - - $886 00
Building and repairing cars, - - - - - - 6,651 92
On original construction, - - - - - - 1,479 12

For running cars, viz:

Pay of engineers, - - - - - $1,623 76
Wood, - - - - - - - 1,264 42
Oil, - - - - - - - - 464 49
Monroe depôt, - - - - - - 1,290 78
Ida station, - - - - - - 277 47
Palmyra station, - - - - - - 193 44
Petersburg station, - - - - - 194 25

Adrian station, - - - - - -	$630 50	
Clayton station, - - - - - -	123 33	
Pittsford station, - - - - - -	7 50	
Hillsdale depôt, - - - - - -	196 10	
Freight and passenger trains, - - -	1,978 02	
		$8,243 96
		$24,261 00

Owing to the improper selection of the timbers used in the construction of this road, and especially between Monroe and Adrian, it has been found necessary again, this year, to replace a large amount of it. This was repaired at a time when there were not sufficient receipts to meet the expense, and it was extremely difficult to obtain the timber on the credit of the road. This expenditure of replacing the superstructure must be continued, until nearly the whole distance between Monroe and Adrian is rebuilt. The road is now in a condition to make these repairs as fast as needed, and a sufficient quantity of timber is now being delivered to make them early the ensuing season. This portion of the road is styled "ribbon road," which is a light rail spiked on the superstructure, with no other fastening but the spike to keep the rail to its place. Hence the necessity of keeping sound timber in for superstructure; for when the spike ceased to hold in the decayed timber, the action of the train removes the rail from its position, and a disastrous "run off" is the consequence, not only doing damage to the trains, but necessarily producing irregularities in running. The manner of its construction prevents its being repaired in any other way than according to the original plan. A very substantial track might be made by removing the light rails, and putting down ties and large rails in their place; but to do this would be very expensive, and both tracks must be done at the same time. The want of spike has been another difficulty in keeping the track in good order. About thirty miles were never more than half spiked down; and, as thin iron was used on that portion of the road, it is of much importance that every spike-hole in the bars should be filled. The want of spike at the time of its construction, and subsequently, is the only reason why this has not been done.

11 covered freight cars, 2 new racks and one passenger car, have been added to the stock of cars, this year. Two new locomotives have also been received and put in operation—one in August and the other in November. The latter was not received in time to do any portion of the fall business. Much benefit is expected to be derived from its use hereafter. From the test already made of its power, I have no doubt it equals one and a half of the ordinary engines now in use. The receipts of the road for the first two-thirds of the year,—viz: from 1st December to 1st August,—were only $5,137 85. This was a period of time when receipts were most needed, to repair the track, build new cars, &c. Some of the main reasons why the receipts were not larger, is, in the main, attributable to the carriers on the lakes. Our

merchants generally contracted with forwarding companies to transport their goods from New York and other eastern cities to Monroe; but upon getting possession of them they wholly disregarded their obligations, violated their contracts, and sent the freight to neighboring ports. This, I inclined to believe, will continue as long as combination exists on the lakes, or until they pursue a more liberal policy; for there is a plain indication of hostility to the public works of Michigan by most of the lake traders.

Almost the entire receipts have been in State script which has been disbursed again at a discount from ten to twenty per cent., which is a direct loss to the State, and one unavoidable as long as this currency is unredeemed.

Although the road has heretofore lacked business to sustain it, which was mainly attributable to the competition on the Toledo Road, and the non-completion of the harbor at Monroe by the United States, that day has gone by, and the road will no more want; its completion west of Adrian, to Hillsdale Centre, places it entirely out of reach of competition with other roads, and terminates it in one of the most beautiful sections of our State; a point which must command the business of the eastern, southwest of our own State; and northern Indiana, with all the productions of that rich agricultural section finding its way to an eastern market through this channel, there can be no longer any doubt of the business to be done on this road; with abundance of business and the increased and increasing facilities on the road, the State can safely rely on a very large increase of receipts the ensuing year.

In addition to the expenditures for original construction and building cars, which are not legitimate charges against running the road and keeping it in repair, there has been paid and charged to the several accounts to which they belong the sum of thirteen hundred and seventy-seven dollars and seventy-three cents, on old debts accruing previous to May, 1842.

Mechanics are now engaged in getting out another train of freight cars, which will be in readiness early in the spring.

All of which is respectfully submitted.

J. H. CLEVELAND,
Dec. 1st, 1843. *Sup't S. R. R.*

Report of Chief Engineer Central Railroad.

THOMAS W. WELLS, Esq., *Acting Commissioner*, &c.

SIR: At the date of the last yearly report the Central Railroad was in course of construction between the villages of Jackson and Marshall, a distance of thirty-one and a half miles; the grading about three-fourths done and a small portion of the timber for superstructure delivered upon the line; since that time the work has been constantly progressing, though it is still in an unfinished state; the original contracts for this work were taken under the expectation that money or scrip would be received in part payment at least, and at corresponding prices; although disappointed in this respect, the contractors for grading

had nevertheless progressed steadily and satisfactorily with their work, and it was only in regard to the timber that any difficulty was experienced.

The legislature of the previous year had, by a joint resolution, forbidden any further letting; and, in consequence, the bridging could not be placed under contract, nor the contracts for timber, many of which had been abandoned, be re-let until this restriction was removed; this was done by the last legislature, but not as early as was anticipated, and a great portion of the winter, the proper season for getting out and delivering the timber, was lost before the contract could be re-let and the work resumed; and notwithstanding every effort has since been used to hasten the progress of the work, in the hope of bringing the same into operation as far as Marshall, in season for the accommodation of the fall business, yet the difficulties arising mainly from the cause above mentioned, but also in part from very unfavorable weather during the fall, have been such as to prevent the accomplishment of this very desirable object; the grading, however, is entirely done, and the bridging so far advanced that three or four weeks will suffice for its completion; of the sills or foundation timbers there are twenty eight and a half miles actually laid down—of this eighteen miles, and of rail laid and ready for the iron about six miles. To lay the balance of the sills will require but a few days of good weather; where they are already laid, the placing of ties and rails may be continued during the winter, and although the work cannot be finished while the ground is frozen, yet all deficiencies of materials being supplied during the winter, I perceive no reason to doubt that the laying down will be completed, and the road in readiness for the trains, on or about the first of May next.

Contracts for the foundations of car-houses at Jackson and Marshall, for said track at the latter place, and for the Albion and Giding's stations, for wells, turn-rounds, &c., have been made and are in progress; the buildings for the points above mentioned have been advertised for contract, and will be let in the course of this month.

The last legislature having authorized the extension of the road to Kalamazoo, the preparation of the line for contract from Marshall to that place was commenced as soon thereafter as the season would permit, and being completed, the clearing, grubbing, grading and culverts, were advertised and put under contract in the month of June last, making, for the whole extent of road in course of construction, sixty-seven and a half miles. The work under these contracts is progressing in the most satisfactory manner, and there is every reason to believe that it will be completed, and the whole line in readiness for the reception of the superstructure in the course of next summer, the appropriation proving sufficient for the purpose; the bridging and timber for superstructure were also contracted for in the month of October, and upon terms quite as favorable as was anticipated, the time allowed for commencing these jobs having but just expired. I am unable to report much progress in them, but the contractors are generally at work, and it is probable that but few re-lettings will be necessary.

By a proviso in the appropriation bill, it was required that the work on this portion of the line, if placed under contract, should be let twelve per cent. below the estimate of its costs made in the year 1841; that this condition of the law has been fulfilled, will appear by the following estimate:

Estimate of 1841, from Marshall to Kalamazoo, for preparation of road surface, including clearing, grubbing, grading, bridges and culverts—	$159,226 00
For superstructure, omitting iron - - - - -	99,128 00
	$258,354 00
Contingencies, 10 per cent. - - - - - -	25,835 40
	284,189 40
Deduct for laying track and dressing roadway, not yet contracted for - - - - - - -	43,600 00
	240,589 40

This sum of $240,589 40 was the estimated cost of the work now under contract between Marshall and Kalamazoo, according to the estimate referred to in the law; and twelve per cent. being deducted, leaves $211,718,77 as the amount to which these contracts were limited.

The actual cost of this work according to the existing contract will be as follows:

For preparation of road surface, including clearing, grubbing, grading, bridges and culverts - - - - - - -	$112,497 63
Materials for superstructure, omitting iron - - -	64,395 50
	$176,893 13
Add for contingencies, 10 per cent. - - - -	17,689 31
Total - - - -	$194,582 44

This sum, besides the allowance of ten per cent. to cover unforeseen contingencies, also includes an ample allowance in cases where the contract prices for work are supposed to be insufficient to secure its completion, and there is no reason to believe the actual cost can exceed the amount stated; from the above it appears that the amount of contracts is still $17,136 33, within the limit fixed by the law, and $46,006 96 below the estimate of 1841 for the same portion of work.

This very gratifying result could not be easily accounted for if the warrants issued in payment are estimated at their cash value; but for all purposes except the purchase of a few things considered as cash articles, they are used to much better advantage, and being the same as cash to those who use them for the purchase of public land. A great many are induced to seek employment upon the road for the purpose of so applying the proceeds of their labor, and obtaining land which

probably they could not obtain in any other way. In addition to the above is the fact that but little money is used at present in payment for labor of any kind, also helping to increase the demand for work upon the railroad, and the effect of competition has been a very great reduction in prices.

Were money to be used, we should undoubtedly be able to make more rapid progress yet; with the exception of the time required, it is matter of doubt whether the road could be carried on to much greater advantage with money than is now being done with warrants; at any rate there is no doubt of the fact that the greater part of the work, and grading especially, is done at present, at much lower rates in warrants than were paid for similar work a few years ago in cash. Since the date of the last report, Dec. 1st, 1842, certified estimates have been given as follows:

For labor and materials between Jackson and Marshall,		$99,266 49
For work done between Marshall and Kalamazoo -		32,782 15
Total for the year - - - -		$132,048 64
To complete the works now in progress as far as Kalamazoo, including car-houses at Jackson and Marshall, and intermediate water-stations - - -		209,715 28
		$341,763 92
Unexpended appropriation, Dec. 1, 1842	$130,400 00	
Appr'n of Feb. 21, 1843 - - -	187,500 00	
		317,900 00
		$23,863 92
Add for laying tract from Marshall to Kalamazoo, dressing road, &c., not yet contracted for - - -		43,600 00
For one car-house and two water-stations - - -		7,000 00
		$74,463 92

This last sum is the amount of appropriation required to complete the road to Kalamazoo, independent of iron and spike.

To iron route will require, including side trakcs, about thirty-seven miles of iron, or at thirty tons to the mile, 1,110 tons, at the rate of - - - - -	$66,600 00
For 56,000 lbs. of spikes for iron, at 7 cents - -	3,920 00
30,000 do. for cross ties, at 8 cents - - -	2,400 00
	$72,920 00

All of which is submitted by your obedient servant,

JOHN M. BERRIEN,

Detroit, December 1st, 1843. *Chief Engineer.*

STATE OF MICHIGAN, *County of Jackson, ss:*

I, Eugene Pringle, circuit court commissioner in and for said county of Jackson, do hereby certify, that the forgoing copy of "joint document No. 5, of legislature, 1844," marked "Exhibit B," was made by me from the original printed copy shown to the witness, John J. Adam, on his examination; and further, that I have compared the foregoing copy with such original or printed copy, and find the same to agree therewith.

Dated Jackson, May 15, 1854.

EUGENE PRINGLE,
Circuit Court Commissioner, Jackson Co., Michigan.

Exhibit C shown to the witness, John J. Adams, on his examination, and referred to by him, May 9th, A. D. 1854, being a copy made by me of a certain printed document then shown to him.

EUGENE PRINGLE,
Circuit Court Commissioner.

(Copy.)

Joint Document, No. 4.—Legislature, 1846.

Annual Report of the Board of Internal Improvement.

OFFICE OF INTERNAL IMPROVEMENT,
DETROIT, 1*st December*, 1845.

The honorable the LEGISLATURE OF THE STATE OF MICHIGAN:

The undersigned, commissioner of internal improvement, in accordance with law respectfully reports, no changes have been made in the engineer corps since our last annual communication, and the former secretary of the board is still continued during the past year; the board have under contract forty-four miles of railroad, the completion of sixteen miles of canal, which also includes the contract for locking Clinton and Kalamazoo canal into Clinton river, and the improvement of the available portions of the Flint and St. Joseph rivers. The reason has been in most respects propositions for the prosecution of their own works, and they have progressed in a satisfactory manner. The railroads would have been completed by this time to Kalamazoo, had there been no difficulty in procuring sawed timber and some unforeseen delay in the receipt of iron and spike. Notwithstanding these untoward circumstances, some sixteen miles of the road are now finished, and the balance will be completed in six or eight weeks; the whole number of miles in successful operation at that time will be two hundred and twenty-two, seventy-four of which will have been added within the twenty-two months last past. The receipts from the Central and Southern roads, the only paying works for the last two years, are as follows:

Central road - - - - - - - - -	$413,916 41
Southern road - - - - - - - - -	123,076 13
Total - - - - -	$536,992 54

Of this sum there has been received and disbursed under the administration of the present road, within the last nineteen months, four hundred and seventy-eight thousand five hundred and eleven dollars and eighty-four cents; within the time last before mentioned, the stock of the Central and Southern railroads increased two hundred four thousand *eighty* hundred ninety-four dollars and eighty-two cents, to wit:

Central road	$150,365 92
Southern road	54,528 90

This over and above the amount paid for construction in internal improvement and land warrants, which are issued upon certificate of the acting commissioner, and for which amount we respectfully refer the legislature to the report of the auditor general.

The present cost and value of the railroads and furniture of the road shops, including materials on hand, are as follows:

Central road, as per auditor's books		$1,837,046 29
Iron, purchase of 1843 and '44 and '45		113,071 53
Furniture of road and shops, &c.		114,467 27
		$2,054,585 09
Add ten per cent. interest during construction		183,704 63
Total cost of road and furniture, &c.		$2,238,289 72
Southern R. R. proper	$904,886 03	
Tecumseh Branch	22,000 00	
Iron in 1843, '44, and '45	37,087 84	
Furniture, &c., as above	71,128 18	
	$1,035,102 05	
Interest as above	90,488 60	
		1,125,590 65
Total value of both roads		3,363,880 37

In addition to the above sum, the invoice of sundries in the internal improvement office and instruments, books, maps, and furniture in the office of the chief engineer, to the amount of one thousand dollars, should be added. The destruction of West Lowell bridge which occurred on the 23d of August, resulted in the following damage and loss:

Total loss of flour	$281 57
Damage to cars	825 00

The passenger-cars made regular daily trips, with but slight interruption; but very great delay and difficulty was experienced in forwarding freight. A large number of men were industriously employed for twenty-six days, without interruption, and, until the breach was repaired, the bridges upon the Rouge and Huron have always been to

the board a source of lively anxiety, and they have frequently been subjected to the close and careful examination of engineers and mechanics. No prudential measures for keeping them unquestionably safe has been spared; and the failure of the one in question, though disastrous to the character and revenue of the road, is undoubtedly to be classed among those providential occurrences which no human foresight could anticipate or avert. The present bridge is remarkably well planned and built, and the materials used were selected with great care. All the bridges over the streams before named have been thoroughly examined and strengthened, and no fears are entertained of any present danger. Nevertheless, the time is not very far distant when they must all be rebuilt.

Since the date of our last annual communication, the car-house at Ann Arbor, with a large amount of private property, has been destroyed by fire. This calamity was occasioned, it is supposed, by sparks from the engine finding their way through some crevice in the plastering to the underside of the roof. The original cost of the car-house was about six thousand dollars, and the value of the fixtures connected therewith was, as nearly as can be ascertained, about one hundred dollars more. To supply the want of that station a cheap water-house and wood-shed are being built at an expense of seven hundred and seventy-five dollars, which will answer all the indispensable demands of business for some time.

The increase of business on the line of the Central Railroad has made it necessary to construct several new side-tracks, especially in the immediate vicinity of mills, and very much to extend some others, which were constructed when the road was built. The expenses of this work have been charged in the construction account, and been paid for out of the receipts of the road.

The Tecumseh Branch of the Southern road, which has been under contract for renewing the superstructure, has been completed, and the iron is now being laid. At the date of our last annual communication to the legislature, it was supposed that twelve thousand five hundred dollars would fit the road for the iron as far as the village of Tecumseh. This belief was founded upon the presumption that a long and expensive bridge over the valley of the River Raisin could be repaired and made safe for the passage of a train of cars for about seven hundred dollars. Upon a clear examination, however, it was thought to be impracticable to repair it, and the board decided to erect another bridge; and, in this way, $5,160 of the appropriation was absorbed, leaving a balance of $7,340, which has all been expended upon five miles of the road. There is still due the contractors upon this part of the road, in land warrants, the sum of one thousand five hundred and seventy-seven dollars and forty-nine cents. Most of the road north of the bridge (four miles) has been renewed by the citizens of Tecumseh, under the supervision of the engineer having charge of the road, and it is believed to be well done. The timely aid afforded by the patriotic citizens of Tecumseh has enabled the work to go on to completion at

least twelve months sooner than it otherwise would. The amount of their expenditures is $3,739 62. There is about one thousand dollars due for engineering, well-digging, and putting in turn-round at Tecumseh, which, added to the above sums, exhibits a deficit for this work of seven thousand two hundred and fifty-two dollars, in land warrants. The parties to whom this amount is payable, rely upon the justice of their cause in enlisting the early action of the legislature, and the board respectfully recommended a provision for its payment. Could this branch have been completed by the tenth of August, its receipts would have more than confirmed the favorable opinion we expressed in our last report. There have been manufactured and forwarded from the two mills at Tecumseh the past autumn 26,133 barrels flour. The number of bushels of wheat sent to Monroe and Adrian by teams is not definitely known; but the quantity is exceedingly large. To above, add the flour made at Clinton, Manchester, Brooklyn, Jefferson, and other points, whose natural outlets would be this road, besides the large amount of merchandise which would have been carried over this road to these flourishing villages; the *destruction* of the flour of the Manchester mills for the last three years has been such that it has paid no revenue to the State. The owner says: "My flour, for the last three years has all gone to Toledo, all of which would have gone to Tecumseh, had the railroad been completed to that place." This branch will prove to be an important addition to the Southern road, and may always be relied upon for more than the interest upon its cost.

Application will be made to the legislature for an appropriation to repair and iron the Palmyra and Jacksonburg Branch of the Southern Railroad to the village of Clinton, five miles north of Tecumseh, its present termination. This road, when in the hands of the company, was completed and used upon wooden rails as far as Clinton; and of the seventy thousand dollars expended in its construction, twenty-two thousand were contributed by the citizens of Clinton and vicinity; but this fact, though showing the deep interest felt by the citizens of that place in the completion of the work, and their faith in the profitableness of the investment, would constitute but a feeble argument in favor of now completing the road in connection with the Southern road, unless, from authentic data, it could be shown that the business that would be done upon it would pay the interest of the amount now required to put it in operation.

An estimate was made by Mr. Hart, the engineer upon that branch of the Southern road, at the request of and in the behalf of the citizens of Clinton, of the amount necessary to fit the five miles between Clinton and Tecumseh, for iron; he reports 6,847 acres of land as heretofore appropriated, sufficient for that purpose. Should the legislature appropriate 8,000 acres of land and ten thousand dollars for the purchase of iron and spike, it would give $20,000 as the amount necessary to put the road in operation. Seven per cent. interest upon this sum would produce $1,400. From statements furnished the board, as

obtained from the actual business done at the several mills, where business would be done upon this road if it were completed to Clinton, we select the following: The Atlas mills made and sent off 8,000 barrels of flour, from last harvest up to Dec. 1st; the Manchester mills, over 8,000; the Jefferson and Brooklyn mills, 4,000 each, and the Novelty mill 3,000, within the same period. Had it not been for the low stage of water, 12,000 barrels, at least, would have been floured in the time mentioned, in each of the mills at Clinton and Manchester, and a like increase at the other mills. Extending this at one-third of the year's business at the above mills, the Clinton and Manchester mills would furnish annually, for transportation from Clinton, from 24,000 to 36,000 barrels each; and the other mills, say 30,000. This estimate would give 90,000 barrels of flour yearly, which, at 3 cents a barrel for the five miles, would yield $2,700, or, at 2½ cents, would give $2,250; for wheat, that would probably be sent off in bulk, is estimated at 8,000 bushels, which at one cent a bushel, would give eight hundred dollars; and estimating all the up freight at, say $1,000, it would make the year's receipts, without a cent for passengers or for carrying the mail, about $4,000. After deducting one half for expenses and $600 for over-estimate, we still have remaining the seven per cent. interest upon the appropriation asked for. From what cursory personal examination the board has been able to give the proposed extension, they are satisfied of the correctness of the above data. In the vain attempt to bring forward all the produce which has been brought to the Central Railroad since the late abundant harvest, 7 locomotive engines and 96 cars and racks have been running night and day for three months. The disaster at Lowell, no doubt, occasioned some accumulation of flour and grain at the western stations, early in September; nevertheless, the character of the road and the limited number of our engines and cars, must have prevented the prompt removal of freight. Had there been no such impediment, the board are fully convinced that a railroad through the central tier of counties, to used for freight, and the stock of which should be good to its owners, and achieve the object of its construction, must be built in the most substantial manner, and laid with a heavy T or H rail. The butt of flat-bar roads are too slight a structure for a heavy freighting business, such as must ever be done upon the Central road, as they soon get out of repair, and become so uneven that trains passing rapidly over them are liable to be, and often are, thrown off the track. The repairs of machinery and cars, consequent upon a rough road, even where they are so fortunate as to keep the track, is at least four times greater than the like repairs of machinery and cars running upon the smooth and solid surface of a T rail. The Lancaster and Harrisburg Railroad Company report the annual expenditure for repairs at four hundred and twenty-five dollars per mile upon the plate-rail portion of their road, while the repairs upon that part laid with the T rail was only seventy-five dollars per mile. It may be proper to say, that this statement, which is believed to be correctly made, rests upon recollection, and is

not made on reference to the printed report, none being at hand. The Reading Railroad, which cost ten millions of dollars, is enabled to make money for the company, although the cars upon their return-trips are generally empty. The price of freight upon the road is lower than upon any other road in the United States. The cost of transporting coal, including repairs of engines and cars, for ninety-four miles upon this road, is less than 40 cents per ton of 2,240 lbs., and the average load per engine is one hundred cars, laden with three hundred and eighty tons; the average cost of renewals and repairs of freight cars, as appears in the company's report of last year, is 5—9 cents per ton hauled. The average cost per ton on the C. R. R., including repairs of engines and cars, is 92 15—100 cents. The expenses of the freight and passenger trains, including repairs of road and wear and tear of machinery, upon the Fitchburg Railroad, as appears by the company's report of 1844, is 288 10 cents per mile for every mile run by locomotives. It should be remarked, that this road was entirely new, and that it was not in operation for the twelve months preceding the report, but a part of that time. Total number of miles run by locomotives, fifty-five thousand three hundred and twenty-four. By subjecting the Central Railroad to the same test for the fiscal year now closed, it gives the expense of running the road per mile, 61 8—10 cents. Whole length of the line in operation some portions of the year, is one hundred and twenty-three miles; the number of miles and the period of time following, to wit:

Detroit to Ypsilanti - - -	30 miles,	since	Feb., 1838
Ypsilanti to Ann Arbor - - -	10 "	"	Oct., 1839
Ann Arbor to Dexter - - -	10 "	"	July, 1840
Dexter to Jackson - - -	30 "	"	Jan., 1842
Jackson to Marshall - - -	30 "	"	Aug., 1844
Marshall to Battle Creek - -	13 "	"	Nov., 1845
Total - - - -	123 miles.		

By making a just allowance for the greater dilapidation of the Central road, and of the machinery and cars, on account of their having been much longer in use than the before-mentioned road, the legislature will readily discover how much greater is the expense of doing business upon a plate-road than upon a T or H railroad.

A full load for an engine running upon our tracks at the rate of ten miles an hour, would be trebled in amount, and the speed increased to twenty miles an hour upon a T rail, while the expenses of running, independent of repairs, which have been included in above estimate, would be one-third less than they now are. The extraordinary facilities given by a well-built T railroad for the cheap and rapid transportation of freight, overcomes, in a great degree, the inconveniences and drawbacks of a residence in the interior, remote from the natural channels of trade. Whether railroads are fit only for the purpose of pleasant or rapid travel, or are, indeed, valuable for transportation of all

the articles of commerce, is a question no longer doubtful or unsettled. Even the history of our own imperfect roads is a development of the wealth and revenues of our country, which, but for their existence, would at this moment be unfelt and unknown. It has offered the settler, far distant in the interior, the means of rapid intercommunication with his remote fellow-citizens, thereby binding him more strongly to our infant State and its institutions; it has largely increased the value of property, by diminishing the cost of transportation of the productions of the mill, the farm, the manufactory; it has made valuable the otherwise nearly valueless water-power of the interior; it has given a healthy stimulus to trade, in crude and ponderous mineral and agricultural productions, and has led to the purchase and settlement of our public lands, and the increase of our population and taxable property to the central counties of this State, blessed as they are with a highly productive soil, an extensive water-power, great mineral wealth, and a salubrious climate.

A first-class railroad is of vital importance. Flour, which is, and always must be, one of the great commercial staples of this State, should be transported from the interior (say Calhoun county, for example) to Detroit river or to Lake Michigan, for a sum not exceeding thirty cents per bbl.; upon a light plate road, incident to the casualties and expenses heretofore named, the price per barrel cannot be much less than sixty cents. The marshal, for taking the census of Calhoun county, reports the wheat crop of that county at 459,110 bushels; this would make one hundred two thousand and twenty-four barrels of flour at the rate of four and a half bushels to the barrel, and at the present rate of transportation (sixty-five cents per barrel) it would cost sixty-six thousand three hundred and fifteen dollars to land it at the terminus of the railroad in this city.

The published rates of transporting flour in 1844, from Albany to Boston, were as follows:

Albany to Worcester, 156 miles, 28 c. per barrel.
Albany to Boston, 200 miles, 30 c. per barrel.

The pro rata charge for carrying flour from Marshall to Detroit, 110 miles, at the first rate above, would be nineteen and three-fourth cents, and at the second rate sixteen and ½ cents; making a difference to the farmers of Calhoun county upon their late crop, at the highest price charged by the Western Railroad, of forty-six thousand one hundred and sixty-five dollars and eighty-six cents; and at the lowest rate forty-nine thousand four hundred eighty-one dollars and sixty-four cents; a like proportionate loss is suffered upon all the marketable productions of the interior, and to all the counties sending their surplus productions to market over the Central Railroad; the whole crop of Calhoun county is deemed surplus only; for the use of example it would be desirable to know definitely the surplus quantity of wheat and other productions in the counties of Jackson, Calhoun, and Kalamazoo, and exhibit the actual loss to the producers of those counties consequent upon for-

warding upon a plate rather than a T railroad; that, however, cannot be ascertained, but the board entertain the belief that it is not less than one hundred and twenty-five thousand dollars, and to all the counties doing business upon this road an amount larger than the interest upon the cost of both the Southern and Central roads. This statement is based upon the presumption that the business of the country can be done upon a plate railroad; the experience of the past year (however) dissipates entirely this idea; although the most unwearied efforts have been made to clear the road, it has been impossible to do so; this circumstance at one time drove wheat out of the market even for goods, at at least two of the most important wheat markets of the West, and even when it commanded cash there was not as much spirit and competition among purchasers as could be desired; the only thing that can give stability and prominence to the wheat market of the central counties of this State, is the early improvement of the railroad in the manner suggested; it may not be imperatively necessary to lay the T rail upon the whole line immediately, but the board do not hesitate to recommend the re-construction of the road from Detroit to Dexter, at the earliest possible moment, and the remaining portion, in sections of thirty miles each, to be annually rebuilt until it shall have been thus constructed at least as far west as Battle Creek; beyond that point a plate road might answer for a few years, and yet we doubt not the true policy of the State demands a continuance of the construction of a T railroad to the mouth of St. Joseph river, as soon as it shall be permitted by the Internal Improvement Fund. In submitting these reflections to the legislature, the board do not lose sight of the fact that the revenue from our public works is pledged by legal enactment to the payment of the interest accruing upon a portion of the public debt, and hence cannot be used in the re-construction of the Central road; this consideration, however, does not deter them from suggesting improvements which they deem infinitely desirable, and which, sooner or later, must be made. The Central Railroad of this State may not be unaptly compared to the Erie Canal of the State of New York; it is and must forever be the great channel of business for the central tier of counties, and one of the indispensable and most important links in the great chain of communication between the Atlantic cities and the valley of the Mississippi; it is confidently believed that in one or two years at farthest, a substantial railroad will be in successful operation on the northern and southern shore of Lake Erie, upon both of which freight will be transported at all seasons of the year, thereby immensely enhancing the passage and freighting business of the Canal and Southern roads. To avail ourselves of this increase of foreign business, and to be fully prepared for the timely transportation of our annually increasing crops, as well as the large importations of merchandise which must pass over the road, we again respectfully report that it must be entirely rebuilt.

In view of these facts, it remains with the legislature to adopt such means as will secure to our citizens, doing business upon the railroad, a cheap and certain market; by the provisions of the amended consti-

tution, money cannot be borrowed by the legislature for any purpose without the consent of the people, and it may be considered doubtful whether a majority of the whole people would consent to the passage of a law which should authorize a debt for the re-construction of the Central and Southern Railroads, or either of them; there would then appear to be but one remedy, to wit, a speedy sale of our public works to a company who would have the ability, as it would be for their interest undoubtedly, to renew a great portion of the superstructure, and lay the T or H rail; by a judicious sale of our roads, *proving* for their early extension and securing our citizens against an extortionate monopoly. Our citizens residing in their vicinity, or doing business upon them, would be greatly benefitted in the increased value of their property, and more than three millions of dollars of the public debt would be extinguished, leaving a small sum unpaid, in comparison with the resources and enterprise of the people of Michigan. The board would, therefore, respectfully recommend the sale of our public works to the favorable consideration of the legislature.

The amount paid for killing and maiming animals upon the railroad is becoming enormously large. If animals are allowed to run upon our road's tracks, very many must inevitably be killed, and when killed, and when no want of care on the part of the engineer can be proven, should not the loss fall entirely upon the owner of the property destroyed? If the owners are not debarred from collecting any portion of the loss, should he not at least share in the risk, say to the amount of one half the damage? These suggestions are thrown out in the belief that some change in the present mode of settling damages are imperiously required.

In our last annual communication the board expressed the conviction that the gross receipts of the Central road, in the year now closed, would not fall short of two hundred and seventy-five thousand dollars; this large increase was based upon the presumption that the exports of the State, particularly grain and flour, prior to another harvest, would be equal to the exports of the corresponding months of the previous year; such however has not been the case, as fully appears from the monthly statement which follows, to wit:

		Wheat and Flour.			Wheat and Flour.
Am't rec'd	Dec., 1843,	$5,197 39	Dec., 1844,	$1,869 87	
	Jan., 1844,	6,169 17	Jan., 1845,	994 23	
	Feb., "	6,548 88	Feb., "	1,121 87	
	Mar., "	4,490 69	Mar., "	1,406 06	
	April, "	6,051 82	April, "	1,833 75	
	May, "	7,066 76	May, "	1,387 78	
	June, "	6,203 82	June, "	157 26	
	July, "	2,743 52	July, "	184 93	
	Aug., "	2,747 21	Aug., "	2,497 80	
		$47,219 26		$11,513 56	

The deficiency upon these two items alone amounts to $35,695 70; in the first nine months of the last fiscal year, in consequence of our light harvest, a wide and general check was also given to mercantile operations, and the revenue under this head which had heretofore kept pace with the increase of our population, and had therefore been annually increasing in amount, and fallen off $743 94 in the nine months above mentioned; while the board regret the diminution of revenue from our public works, yet, under the state of facts as demonstrated in the foregoing table, we see not only a satisfactory explanation, but cause for congratulation that our business men have so universally limited their business to the ability of the country to pay. The following sums have been received for the transportation of the following articles and the sale of old iron, to wit:

Sundries.	In.	Out.	Total.	Total Receipts.
Flour,	124,540	368½	124,540 bbls.	$47,184 80
Whiskey,	1,102	368½	1,470½	770 50
Pork,	831½	40	871½	82 47
Salt,	3	4,455	4,458	2,942 94
Beer,	98	276½	374½	159 99
Cider,	1	601½	602½	396 48
Fish,	1	435	435	282 16
Wheat,	91,480		91,480	11,874 10
Agl.,	883,586	3,326,568	3,210,154	6,822 00
Merdz.,	1,184,001	18,752,554	9,936,595	32,011 37
			Carried forward	$101,528 81
			Brought forward	101,528 81
Ashes,	920,609	28,194	948,803	2,088 07
Vehicles,	14,572	213,409	227,981	764 21
Wool,	189,015	1,805	190,820	394 26
Lumber,	16,882	105,436	122,318	242 14
Shingles,	218	730¼	948¼ in.	400 70
Wood,	30	2¼	32¼ cords	41 39
Horses,	7	1	8	37 12
Cows,	1		1	4 00
Sheep,	5	70	75	63 40
Hogs,	8	4	12	11 67
Calves,		2	2	2 00
				$106,577 84
Passengers	24,105	27,030½	51,135½	89,128 03
U. S. mail - - - - - - - - -				6,728 87
Sale of old iron - - - - - - - - -				257 83
Rec'd of J. H. Cleveland, supt. S. R. R. - - - -				8,391 78
Balance from last report - - - - - - -				2,936 74
				$214,075 09

Disbursement of receipts, as follows:

Detroit station - - -	$4,047 98		
Dearborn - - - -	1,064 63		
Wayne - - - -	1,114 22		
Ypsilanti - - -	1,478 38		
Ann Arbor - - -	1,784 46		
Dexter - - - -	1,054 46		
Davison's - - - -	964 07		
Grass Lake - - -	975 79		
Jackson - - - -	1,369 45		
Gidleys - - - -	956 10		
Albion - - - -	1,048 86		
Marshall - - - -	2,420 70		
Battle Creek - - -	90 44		
		$18,369 54	
Carried forward - -	18,369 54		
Brought forward - -	18,369 54		
Repairs machinery and cars - -		23,611 84	
Freight and passenger trains - -		8,191 93	
Repairs of road - - - -		33,097 86	
Pay of engineer - - - -		6,548 01	
Oil acc't - - - - - -		3,738 83	
Wood account - - - - -		10,560 08	
			$85,748 55
State treasurer - - - - -		9,759 32	
Iron acc't C. R. R. - - -		53,401 71	
New locomotives S. R. R. - -		6,381 62	
Detroit warehouse - - - -		316 90	
Building new cars - - - -		26,217 80	
New locomotives C. R. R. - -		10,997 37	
Construction - - - - -		1,807 46	
Cash on hand - - - - -		1,074 75	
			109,957 00
			214,075 09

Statement showing the whole total of the receipts upon the Central Railroad for the year ending Nov. 30, 1845.

	F. out.	In.	T. freight.	Pass. out.	In.	T. Pass.	*Is more.*	Old iron.	W. total.
1844.									
Dec.	$1,880 83	$2,588 83	$4,469 66	$1,728 12	$1,725 96	$3,454 08	$6,976 39	–	$8,621 43
1845.									
Jan.	950 04	1,507 27	2,457 31	1,637 41	1,776 83	3,404 24	551 25	–	6,412 83
Feb.	855 02	1,628 82	2,483 84	1,604 74	1,736 49	3,341 23	1,455 99	$27 41	7,308 47
Mar.	944 70	1,982 10	24,926 80	1,829 39	2,121 20	3,550 59	–	100 42	6,977 81
April	1,965 77	2,976 16	4,941 93	2,940 81	3,135 95	6,076 76	588 46	–	11,607 15
May	4,289 68	2,446 32	6,736 00	5,286 21	3,602 34	8,888 55	–	–	15,624 55
June	3,443 45	764 16	4,207 61	5,445 79	4,666 55	10,112 34	1,061 76	–	15,381 71
July	4,512 53	972 21	5,484 74	4,004 77	4,276 17	8,280 94	890 11	–	14,655 79
Aug.	2,117 21	2,785 69	4,902 90	4,167 30	4,134 83	8,302 13	876 90	–	14,081 93
Sept.	4,658 02	8,019 40	12,677 42	7,230 25	5,731 04	12,961 29	–	–	25,638 71
Oct.	7,520 35	23,233 65	30,754 00	7,340 74	5,683 70	13,024 44	660 68	–	44,439 12
Nov.	5,871 13	1,864 50	24,535 63	4,152 99	3,178 45	7,331 44	–	130 00	31,997 07
	$39,008 73	$67,569 11	$106,577 84	$47,368 52	$41,759 51	$89,128 03	$6,782 87	$257 83	$202,746 57

3,690 57 received in specie funds; 68,224 00 in par funds; $130,832 00 in scrip.

Michigan Central R.R. Co. vs. Michigan So. R.R. Co., 3rd 139

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The expenditures upon the Central Railroad, as per certificate of the chief engineer - - - - - -	$77,636 91
Add to the above sum the amount paid to engineers and appraisers which has been charged against the appropriation, also amount allowed by the board of commissioners and auditors, &c. - - - - - -	21,654 24
Total amount - - - - -	$99,291 15
Southern Railroad, chiefly upon the Tecumseh Branch	13,985 35
Clinton and Kalamazoo canal - - - - - -	17,320 63
Improvement of St. Joseph river - - - - - -	5,733 28
Improvement of Flint river - - - - - -	4,029 68
Improvement of Grand Maple and Kalamazoo rivers -	811 18
Detroit Grand River road - - - - - - -	28 25
Northern Railroad - - - - - - - -	300 00
Balance of appropriation upon some of the above works unexpended, as follows:	
Central Railroad - - - - - - - - -	6,222 17
Southern Railroad, renewing Tecumseh Branch - -	1,250 90
Improvement of St. Joseph river - - - - -	11,975 06
Improvement of Flint river - - - - - -	499 69

Southern Railroad.

The receipts for the year 1845 exhibit the small increase of $2,395 11 over the receipts of the previous year. The officer in charge of this road sufficiently accounts, we apprehend, for the sum being no larger, as will fully appear on reference to his report to this office, and which is appended hereto. He says, "by an examination it appears that the receipts for the first eight months of the last fiscal year were not quite one-half what they were in the corresponding months of the previous year;" this was owing to the fact that there was a great deficiency in the wheat crop, and a corresponding caution in the purchase of merchandise and other articles of traffic which ordinarily enter the country by the way of the railroads. In making an estimate of the amount likely to be from our public works for a given period of time, the principal contingency to take into the account is that referring to our harvests; when they are abundant, our receipts will be large, not only from the actual receipts of its transportation, but because a large crop gives an impulse to all commercial transactions. The board estimated the receipts of the past year at one hundred thousand dollars, provided the Tecumseh Branch was completed before the commencement of fall business; the branch is still unfinished; had it been completed it would have swollen the aggregate of receipts considerably, although not sufficiently large to have fulfilled our predictions of last year.

On the 22d of October, the iron safe in the office of the superintendent at Monroe was opened, and $1,540 75 was abstracted therefrom; soon after the occurrence two members of the board repaired to Monroe and made such an examination into this matter as appeared to

them necessary. They ascertained that on the night of the robbery Mr. Murphy left the office at a late hour at night, and returned to it again between 3 and 4 o'clock in the morning; that in the interim the office was entered and the safe opened, and that together with a table drawer rifled of their money contents; the key of the safe was usually kept in the back part of a table drawer, and it is alleged by Mr. Murphy that upon the morning of the robbery it had not been removed from the peculiar position in which he kept it; what would seem to confirm this opinion is the fact that some violence was used in opening the safe; and yet a part of the business must have been done with a key, either the true or a false one:

As the integrity and faithfulness of Mr. Murphy is beyond all question, we did not think his removal called for, and he is therefore retained; diligent scrutiny is being made in certain quarters for the lost money, and some hope is entertained that the thief at any rate will be discovered.

The highest speed attainable upon railroads consistent with safety is the minimum of modern expectation and requirement, forty miles per hour, and even faster is performed on the T rail with the passenger train; and one half that rate with a train of loaded cars; when we run twenty miles an hour with passengers and ten miles an hour with freight, we are doing all that can be done with prudence; sometimes we do more, especially with freight trains, but nothing can justify it by way of palliation. We say that our motive power bears no proportion to the length of the road and the amount of business to be done upon it; to exhibit our deficiency in this respect by comparison, we give the following statement:

Utica and Schenectady Railroad, 78 miles long, 12 locomotives; Syracuse and Utica R. R., 53 miles long, 9 locomotives; Auburn and Syracuse Railroad, 26 miles long, 3 locomotives; Auburn and Rochester R. R., 78 miles long, 10 locomotives; Tonawanda R. R., 43 miles long, 5 locomotives; Michigan Central R. R., 110 miles long, 7 locomotives; Southern R. R., 68 miles long, 4 locomotives.

The whole number of miles run on the Central Railroad the past year is 138,598.

The engine which has exceeded all others is the Dexter, F. Gannet engineer, exceeding the highest number attained in the previous year 1,692 miles; whole number of miles run by his engine is 27,282. We take great pleasure in bearing testimony to the neatness and general good order of the machinery in the hands of the engineers upon the Central Road.

The warehouses and mills at Marshall, the western terminus of the Central Railroad, were emptied some weeks sooner than other portions of the line, in consequence of the great number of cars engaged in the transportation of merchandise and other freight destined for the countries west and north and south of that place during the latter part of October and the most of November. The large quantity of iron hauled to Marshall, for the extension of the road, also gave to that point addi-

tional facilities for the transportation of such kinds of freight as could be properly loaded upon racks.

This explanation is given in exculpation of the board and its agents, whose motives and conduct have not, in all cases, been duly appreciated, and, in some instances, have been, as we apprehend, wilfully misrepresented. We respectfully refer the legislature to the reports of Joseph H. Cleveland, esq'r, superintendent of the Southern Road, Col. John M. Berrien, chief engineer, and D. Shook, esq'r, superintendent Clinton & Kalamazoo Canal, for more ample information in reference to the work more immediately under their control.

All of which is respectfully submitted.

O. C. COMSTOCK, Jr.,
ROBERT P. ELDRIDGE,
GEORGE REDFIELD,
Commissioners of Internal Imp't.

Report of the Superintendent of the Southern Railroad.

The hon'ble the Board of Internal Improvement:

The undersigned has the honor to report, that the receipts on the Southern Railroad, for the year ending Nov. 29th, 1845, were as follows:

			Corresponding months last year.		
December,	1844,	$1,462 99	December,	1843,	$4,580 58
January,	1845,	1,267 72	Jan.	1844,	4,182 49
February,	"	998 69	Feb.	"	3,337 09
March,	"	1,267 80	March,	"	2,631 32
April,	"	2,051 94	April,	"	4,748 33
May,	"	3,221 18	May,	"	8,332 92
June,	"	2,135 33	June,	"	4,296 62
July,	"	2,615 35	July,	"	4,247 23
August,	"	8,417 90	August,	"	4,289 16
Sept.	"	12,654 71	Sept.	"	7,590 10
October,	"	13,339 91	Oct.	"	7,335 84
November,	"	10,354 12	Nov.	"	4,766 86
					$60,340 51
Carrying U. S. Mail - - - - -				2,907 36	
Rent of rooms at Hillsdale - - - -				36 00	
Old stoves sold - - - - - - -				6 00	
Broken bbls. from damage by cars sold -				4 62	
					62,735 62

The following are the expenditures for this year:

Repairs of road - - - - - - - -	$21,915 34
Building and repairing cars - - - - -	12,021 34

Running expenses, viz:		
Pay of engineers		$3,859 00
Wood		2,198 13
Continued forward		$39,993 81
Brought forward	39,993 81	
Oil		1,454 54
Monroe depôt		2,270 19
Ida station		218 64
Palmyra "		400 42
Petersburgh "		578 96
Adrian "		1,142 30
Pittsford "		83 13
Clayton "		247 67
Hudson "		369 60
Hillsdale "		1,025 70
Freight and passenger trains,		2,036 45
Construction Southern R. R.		275 84
Construction of Tecumseh Branch		1,292 11
Loss on money stolen from depôt at Monroe		1,540 75
Sinking fund		1,130 94
Amount overpaid last year by J. H. Cleveland		15 74
Cash paid O. C. Comstock, jr., acting com'r		8,391 78
Cash on hand		267 05
		$62,735 63

It will be seen that the increase of receipts *of receipts* over last year is small, and for the purpose of exhibiting the cause, I have included a statement of the receipts of the corresponding months for the fiscal year ending November 30th, 1844. By an examination, it appears that the receipts for the first eight months of this year were not quite half what they were for the corresponding months in the year previous. An explanation from me will hardly be needed upon this point, as all who are familiar with our business know that in the early part of the fiscal year of 1844, we were engaged in carrying off the crop of 1843, while in 1845 we had no old crop on hand to aid us; and the unexampled one of the present year has produced the greater amount of this year's receipts, and will continue to furnish the road with an abundant business up to and perhaps including the month of June next. With this prospect before us, we may confidently look for a very large increase of receipts and of nett proceeds the ensuing year.

It is gratifying to be able to state that the road is, and has been during the past season, in an excellent state of repair, enabling us to run it with great advantage, regularity, and without serious accident or inconvenience.

There is a great lack of motive power on the road, and my own experience proves that it is poor economy to be in this condition, and espe-

cially in future, when the advantages for obtaining motive power has so much improved. Upon this road three engines only have been in use the past year, the fourth one having been recently put in operation. The road needs now at the least four new locomotives, two of which should be placed on the road early in the spring, and two as early as July next; and then this amount of motive power would by no means be sufficient for the business offered in the months of September and October, but would, no doubt, be all that it would be found profitable to add in one year. An increase of motive power would be good economy without an increase of business; as, having more, we should be able to pass over the road at a less rapid rate, at a greater saving to machinery, cars and road, thereby greatly lessening the expenses in rebuilding and making repairs. I am aware that it will not be good policy to augment the facilities to such an extent as to do all the down freighting in three months, and remain nearly idle the balance of the year, but sufficient should be had to do all that is done; because, if it goes by some other mode, it is forever lost to the State; and, inasmuch as the State has engaged in the carrying-trade for the country or vicinity through which the road passes, it seems to me they should be prepared to do all that must and does go forward. I am well aware that considerations of a pecuniary nature have hitherto prevented the purchase of the motive power needed; but I think that *crisis* has passed, and especially in reference to this road, and believe that no difficulty exists in the way of making the requisite purchases, and that the addition of nett proceeds of the ensuing year would more than pay for the purchases recommended.

The addition to the road of the Palmyra and Jacksonburgh Railroad, and the probability of its future extension to Clinton at an early day, will bring a large increase of business to this road, and prove the necessity of increasing the motive power and cars to meet the demand.

The nett proceeds of this year are as follows:

Paid on construction S. R. R. - - - - -	$275 84
Do. Tecumseh Branch on acc't of freight, &c., on iron	1,292 11
Paid to sinking fund - - - - - - - -	1,130 94
Cash paid to O. C. Comstock, p. acct'g commiss'r - -	8,391 78
Paid on old claims - - - - - - - -	700 00
12 new covered freight cars (6 old ones razeed) - -	3,300 00
2 new double racks built (one old one razeed) - -	600 00
Rebuilding locomotive - - - - - - - -	1,500 00
Cash on hand - - - - - - - - -	267 05
	$17,457 72

I have also to inform you that on the 23d of Oct. last the office at Monroe, in charge of S. Murphy, esq., collector, was robbed of money

belonging to the State to the amount of $1,540 75, of which no trace has been to this date obtained.

All of which is respectfully submitted.

J. H. CLEVELAND,
Superintendent.

Inventory of Property on Southern Railroad.

On road:

5,350 feet of square timber	$254 18
2,900 large ties	232 00
49,000 feet of rails and ribbin	343 00
1,543 cords of wood (mostly delivered)	1,543 00
17 picks	25 50
25 claw and iron bars	30 00
29 spike hammers	29 00
12 spades	12 00
19 shovels	19 00
10 cart hooks	15 00
3 cross-cut saws	12 00
2 handsaws	3 00
7 long-tie saws	10 00
22 woodsaws	26 00
10 axes	13 00
3 adzes	6 00
21 chalk lines	1 38
Cold chisels and spike-set	10 00
4 patent drills	32 00
Right to use the above drills	74 00
2 Grindstones	3 00
11 hammers	11 00
17 repairing cars	765 00
3 large timbers cars	220 00
4 large dirt carts	400 00
2 horses, harness, and whippletrees	200 00
Stoves at stations	36 00
5 pails	2 00
3 lamps	3 50
8 oil cans	2 20
1 steel framing square	2 00
7 snow drags	20 00
9,300 lbs. spike	790 00
3 augers	3 00

In car shop at Monroe, under charge of R. Livingston:

6 moulding planes	6 00
16 augers	12 00
7 work benches	70 00

1 lot of patterns	$357 00
6 saw benches	6 00
6,000 feet of pine lumber	120 00
5,000 feet of ash lumber	45 00
2 eight-wheel passenger cars	2,500 00
3 fine do. do.	900 00
46 covered freight cars	13,800 00
3 eight-wheeled racks	1,050 00
2 frame do. do.	500 00
3½ tons spring *spring* steel	600 00

Under charge of J. Lake, superintendent machinery:

4 locomotive engines	24,500 00
4 hinch bars	12 00
6 *six* small oil cans	3 00
4 pails	2 00
4 hammers for engines	4 00
48 wrenches do.	96 00
13 cold chisels	7 00
3 shovels in depot	3 00
4 sand-boxes for engines	6 00
6 new car axles	96 00
1,300 lbs. car iron, assorted	97 50
3,175 lbs. new castings	127 00
1 locomotive crank	165 00
7 sets of extra car wheels	875 00
2 pair extra track wheels	125 00
1 Do. tender do.	62 50
24 lbs. brass casting	76 80
42 lbs. sheet copper	75 00
400 galls. oil	300 00
500 lbs. tallow	40 00
800 lbs. lard	64 00
111 tons stone coal (Ohio)	50 00
300 bushels charcoal	14 00
1 platform scale	24 00
1 lathe and fixtures	200 00
Screw plate and taps	60 00
1 locomotive lamp	30 00
3 blacksmith's vices	25 00
Lot of snap iron and steal	180 00
2 sets blacksmith's tools	225 00
3 dozen super files	12 00
3 copper flues for engines	15 12
2 pair bellows	40 00
4 sets sep. car wheels	75 00
2 tons old metal	60 00
13 new car springs	120 00
1 grindstone	2 00

1 large stove in shop depot	$44 00
1 large tin oil can	10 00
6 oil cans	3 00
1 roll packing	9 50
25 feet stove-pipe	3 75
2 sets calking iron for flues	10 00
3 small engine bells	4 50
1 iron square	75
1 soldering iron	1 00
1 desk	1 50
8 jack screws	64 00
4 tallow cans	4 00
1 set tools for cleaning boilers	3 00
1 rake and coal box	2 00
1 band wheel car	40 00
6 wheel barrows, 4 of stations	27 00
1 large bolt box and steel sack	2 50
10 extra coupling chains	10 00
3 drill stocks and bit	15 00
2 broken cranks	50 00
2 jincks for making cars	20 00
4 woodsaws	5 00
3 axes	3 75
1 lard kettle	4 00
4 kegs nails	22 00
Empty oil casks, gallon measure, and tunnel	4 00
2 fire shovels	1 50
Old tin	25 00
1 horse and harness	100 00

At the Monroe office and depot:

1 large counting-desk, 1 long table, 2 black-walnut tables, 10 chairs, 4 candlesticks, one pair snuffers, 2 stoves and pipe, 2 water pails, 1 wash bowl, 2 tumblers, 2 spittoons, 2 pair shovels and tongs, 1 long table with drawers, 1 clock, 1 map U. S., 1 do. of Michigan, 1 ream freight way-bills, 1 ream writing paper, 12 sticks sealing wax, ½ doz. tape, 1 lot wafers, 2 day books, 1 freight book, 1 freight blotter, 1 passage book, do. blotter, 1 journal, 1 ledger, 3 rules, 1 letter stamp, 2 inkstands, 4 bottles ink, 1 oil jug, 1 oil can, 1 copper lard can, 2 glass lamps, 1 iron safe, 6 corn brooms, 2 splint brooms, 1 counter brush, 3 way-bill pocketbooks, 1 pair scissors, 1 ball twine, 1 ball wick, 1 cart and harness	500 00

At Adrian office and station:

1 black-walnut table, 1 desk, 2 tin candlesticks, 2 inkstands, 5 bottles ink, 6 chairs, 1 pr. shovel and tongs, 1 stove, 1 sand-box, large table or desk, with drawers	50 00

At Hillsdale office and station:

1 desk and case, 1 inkstand, 1 sand-box, 5 quires paper, 2 tin candlesticks, 1 pair snuffers, 1 water sprinkler, 6 chairs, 8 lbs. candles, 1 brass clock, 1 ash pail, 1 water pail, 1 stove and pipe in office, 1 do. in sitting-room, 1 large do. in engine-room, 1 fire-shovel, 2 woodsaws, 1 axe, 1 broom, 1 horse, 1 harnes, whippletree and chain, 1 horse blanket and sircingle - - - - - $200 00

$74,128 18

Report of the Chief Engineer of Central Railroad.

O. C. Comstock, Jr., esqr.,
Acting Commissioner.

Sir: During the fiscal year just closed, the engineers of the Central Railroad have issued certified estimates and accounts for labor, materials, &c., between Jackson and Kalamazoo, including per centage retained from estimates previously given, amounting all to $77,636 91; on the seventh and eighth divisions, from Jackson to Marshall, the work was completed during the last winter, and the accounts of that portion of the line closed, as far as the engineers had any connection with them; on the ninth and tenth divisions, between Marshall and Kalamazoo, the contracts have progressed so far towards the completion that the track is now ironed and in use to Battle Creek, thirteen miles west of Marshall, and within one week from this date the whole route to Kalamazoo, twenty-three miles further, will be ready, and the iron laid down as fast as it is delivered upon the line; the superstructure contracts, however, as well as those for the Kalamazoo depot, the way stations, and some of the bridges, are still unfinished or unsettled the unfinished work consists principally of filling, dressing track, ditching, cattle-guards, road crossings, &c., but nothing which will interfere with the laying down of the iron, or which will delay or obstruct the use of the tract as soon as the iron is laid. To complete the works and to settle the contracts of all kinds *as* Kalamazoo, exclusive of what is due for right of way, will require as soon as can now be ascertained the sum of $11,887 93, and on the completion of the work the further sum of $5,612 11 will be due for per centage retained from estimates heretofore given, making a total of $17,500 04 yet to be paid; this sum, added to the whole amount of estimate by the engineers for materials, &c., between Jackson and Kalamazoo, 68 miles, gives a total of $545,552 87, $8,022 83 per mile, which amount has been paid altogether in warrants—a part of them on the Internal Improvement Fund, the balance drawn against the public lands; in this sum is included all the accounts given for fencing, a portion of rights of way paid for in warrants, and everything estimated by engineers, whether for labor or material; the entire cost of this portion of the road will be found by adding to the amount above given any additional sums which

may have been allowed the contractor by the board of commissioners, or the board of auditors, and other accounts which have not passed through the hands of the engineers, and also adding the sums paid in cash or still due for right of way, for iron and spike and for engineering.

The following is an estimate of the work still unfinished or unsettled between Marshall and Kalamazoo:

Laying track	$3,486 06
Filling and dressing track	1,389 55
Timber	1,080 40
Ditching, excavation, and embankment	1,976 18
Cattle-guards, crossings, culverts, and extra work	1,266 88
Bridging	1,338 86
Car-house at Kalamazoo and Way station	1,350 00
	11,887 93
Add retained per centage	5,612 04
Total amount	$17,500 04

Respectfully submitted by your obedient servant,

JOHN M. BERRIEN,
Chief Engineer.

Detroit, Dec. 1st, 1845.

Articles in charge of the Engineers C. R .R.

4 transits (probable value)	$100 00
5 levels	200 00
5 leveling rods	7 50
2 compases	50 00
2 chairs	5 00
1 axe	1 00
1 stove and pipe	6 00
1 drawing table	4 00
4 chairs	2 00
1 writing desk	8 00
2 tin paper cases	25
2 inkstands	25
1 water pail	50
1 ivory scale	1 00
8 rules	25
3 triangles	25
1 pile hamme	75 00
	$461 00

Amount of Stock and Tools in Car-shop, Detroit, in charge of George Gibson, Superintendent Car-shop.

12 work benches, at $10	$120 00
2 double work benches with vices, and 1 without vice	18 00
40 saw benches *of* $5, 14 benches for rep. and fitting cars	29 00

5 stoves and pipe $53, 8 stoves and pipe for cars $14		$98 00
2 copper glue-kettles $5, 1 iron furnace $25		6 25
1 broad rule 50 cts., 1 tape line $1 25, 1 spirit level $2		3 75
Crane, windlass, and tackle $50		50 00
Windlass for taking cars in paint shop		10 00
52 handscrews		32 00
Lot augurs $18, 3 drawbore pores $1 25		19 25
White lead $3, jug and linseed oil $2		5 00
150 lbs. nails $7 50, 1 iron vice $6, 1 grindstone $5		18 50
2 saws $1 50, 1 cross-cut saw $3, 1 pail 25 cts.		4 75
3 doz. flat files $12, 51 doz. saw files $57 25		69 25
5 doz. car-door locks $15, 150 papers 20 oz. tacks $15		30 00
150 lbs. curled hair $36, 20 lbs. glue $3 20		39 20
Part box soap $2 50, 6 chamois leather $4		6 50
6 doz. padlocks $6, sereges $3, 6 anecebres $3 50		12 50
1 coach $2, 150 feet 4-inch rope $12		14 00
3 single blocks $3, lot rope $5, claw bar $5 75		8 75
300 brass screws, $200, 2 boxes lamps for shop $4		204 00
6 reflector lamps $4 50, 1 globe lamp $1 25		5 75
4 tracks for shifting cars $10, 2 slates 38 cts		10 38
1 steel and 1 trying square $2 25, 1 stick $1		3 25
2 hand axes $4, 4 bench planes $3		7 00
6 pair match planes $4 50, 16 moulding planes $16		20 80
1 frame for *deging* car sash $4		4 00
1 hollow augur and bit $2 50, lot fringe $20		22 80
20 yds. lace 30 cts., 3 papers tufts 75 cts, 10 papers brads $1 25		2 80
1 desk and inkstand $1 75		1 75
2 frames for cars with siding and roof stuff		200 00
18-wheel freight car unfinished		225 00
14,000 feet pine boards at $16 per M		224 00
1,800 " " 2-inch, cut out for the water-tubs		33 80
24,500 " white wood oak and ash lumber at $10		265 00
3,500 " ash lumber at $15 per M		52 50
5,000 " cherry lumber at $14 per M		70 00
1 old baggage car		275 00
85 four-wheeled freight cars		25,500 00
10 8-wheel freight cars		4,550 00
19 8-wheel racks		5,575 00
19 canvass covers for racks		475 00
8 passenger cars		7,850 00
2 more cars, 8 wheels		1,600 00
2 baggage cars, 8 wheels,		1,000 00
		$48,767 43

Inventory of Property connected with repairs of machinery and cars, December 1, 1845, in charge of Wm. F. Chittenden.

7 locomotive engines 6 *a* $7,000 and 1 *a* $5,000	$47,000 00
3 sets small tools for a big engine	350 00

1 extra tender	$600 00
5 cranks for driving wheels	600 00
4 pairs of " "	2,400 00
1 do do do	550 00
5 sets of blacksmith's tools	625 00
13 vices	150 00
4 screw plates with tapes and dies	80 00
3 turning lathes with slide, rest, and small tools	750 00
4 drill braces with drills	90 00
1 portable forge	20 00
1 punching machine	110 00
1 lot of boiler-making tools	40 00
1 press for railroad wheel work	150 00
1 do do driving wheels	50 00
1 small wood car	30 00
4 wood saws with two axes	6 00
2 oil cans	20 00
6 stoves with pipe set up and in use	150 00
50 cords of wood at 1 28	75 00
20 tons Ohio coal	90 00
400 bushels of charcoal	18 00
20 doz. assorted files	200 00
200 lbs. caststeel at 20 cents	40 00
8 tons of bar iron at $90	720 00
10 copper flues for locomotive boilers	500 00
150 gals. sperm oil	150 00
20 new car axles	300 00
40 pairs truck, tender, and car wheels and axles	1,800 00
24 new truck wheels	432 00
1 new truck frame	90 00
24 shop lamps and 3 globe do	8 00
6 sets bur. for locomotives	25 00
1 locomotive bell	20 00
4 railroad wheels with small patterns for 7 locomotive engines	700 00
1 set of turn-round patterns, 10 fray do., 1 set of lathe do., 2 sets of passenger car do., 3 sets of freight cars do., 1 stove do	1,400 00
1 set of pattern maker's tools	50 00
8 lamps for locomotive engines	160 00
4 wheelbarrows	32 00
4 ties for track wheels	60 00
10 quires emory and sand paper	3 00
1½ doz. patent pails	4 00
4 barrels tallow	60 00
A quantity of iron and springs for new cars unfinished, estimated value	12 00
	$61,908 00

Inventory of Property in the Internal Improvement Office.

3 writing desks,
4 do. tables,
2 bookcases,
9 maps, 1 U. S., 2 Mich., 1 Detroit and 560 maps of Mich.,
1 double-iron safe with 2 sets of keys,
4 levelling instruments and staff,
1 surveying compass and chain,
1 transit, 2 tripods,
1 levelling rod,
5 chairs and three stools,
3 stoves with pipe,
2 shovels, 1 pr. tongs,
2 coal kettles and 1 poker,
1 waterpot,
1 duster tin do.,
1 broom,
1 pitcher, 1 tumbler,
1 washbasin, 1 do. for stove,
2 pails,
8 brass candlesticks,
15 lbs. candles,

The aboe valued at about $700.

1 set of books of internal imp't,
2 " " Nitg. Com'r C. R. R.,
1 " " Det. & St. jr., R. R. Co.,

Lot of stationery, such as papers, blank forms, inkstands, ink, quills, scribes, &c., &c.; lot of profiles of the different works of Michigan, documents, contracts, reports, &c., &c.; session laws from 1837 to 1848 inclusive, one chest containing engineers' manuscripts, &c.

Inventory of Articles in care of Weighmaster, Detroit station.

1 horse	$100 00
1 cart	8 00
1 chain and whippletree	5 00
2 sets harness	12 00
120 bushels oats	24 00
2 platform scales (Fairbanks)	160 00
3 trucks	40 00
½-wheel truck	5 00
2 shovels at 7	1 75
11 post lamps	8 00
2 lamp-fillers	75
11 lanterns	11 00
1 globe lamp	1 50
7 candlesticks	1 75
1 copper oil can	1 00
1 stove and pipe	8 00
1 pr. shovel and tongs	2 00
2 steel iron pails for coal	3 00
3 inkstands	37
1 rule, 1 sand-box	13
1 paper cutter, 1 wafer box	20
3 chairs	1 00
1 table	5 00
1 jug for turpentine	50
Lot of freight books, 2 brooms	25

1 hammer	$1 00
1 paper case	2 00
1 small iron safe	25 00

Inventory of State property, in and on the Central Railroad from Detroit to Battle Creek:

60 shovels and spades, value about	$60 00
22 picks	20 00
34 iron bars	30 00
29 axes	30 00
52 spike and nail hammers	27 00
6 caret hooks	5 00
29 cold chisels	8 00
20 punches	2 00
9 wedges	2 00
25 wood and repairing cars	1,300 00
7 horses and harness	350 00
2 wagons	30 00
35 buck and handsaws	30 00
26 stoves and pipes	300 00
12 pails	3 50
25 wheelbarrows	35 00
1 grindstone	4 00
30 lamps, lanterns, and candlesticks	40 00
19 chains	20 00
12 oil cans	4 00
4 platform scales	160 00
6 saw sets	3 00
9 tables and desks	40 60
4 shovels and tongs	1 50
12 inkstands	1 50
9 drills	50 00
1 square	38 00
18 spike punches	2 00
3 filing machines	400 50
	$2,958 88

Invoice of sundries under improvement of St. Joseph river, now at Union city, Branch county:

One scow, complete, moored at the bridge over the St. Jo. river, in this village, with crane, capstan, hausers, grappling-hooks, and five setting poles.

The boat has on board as follows:

1 No. 3 prem. cooking stove, with copper furniture, 3 joints and 1 elbow stovepipe; 1 cross-cut saw, 3 Ames's shovels, one axe, six pair

blankets, 5 pillow-cases, 5 straw bedticks, 6 earthen plates, two dishes, 1 set cups and saucers, 1 small pitcher, 6 plated teaspoons, 2 tin pans, 1 set knives and forks, ½ keg 3-inch spikes.

The above property is in my care, subject to your disposition.

I am sir, with respect, yours, truly,

THOMAS L. ACKER.

Clinton and Kalamazoo Canal.

To the Hon. the Board of Internal Improvement:

The undersigned would report, that in August most of the locks were filled, and but for the break in lock No. 11 boats might have run from Frederick to Rochester; the lock at Frederick, which connects the canal with Clinton river, is completed, but not in time to be used before navigation closed; in November a small boat of about 20 tons burthen ran between Frederick and Utica, during which time the following articles were transported:

From Utica to Frederick, 1040 bbls. flour, 9 casks potatoes, 5 bbls. whiskey, 3 do. furniture, 1890 bush. wheat, 218,000 feet timber, 20 M. staves.

From Frederick to Utica 35 tons merchandise. As no regular rates of toll were established by the board, the superintendent charged the following, with the understanding that it should be expended in repairs on the canal between Frederick and Utica: on flour, whiskey and furniture, bbl. 2 cents, on each cask potatoes 1 cent, on every 200 lbs. wheat 10 cents, for every M. feet timber 2½ per M. staves, and 10 cents per ton on merchandise, above shipment, amounting in all to $46 90, twenty-two dollars and sixty cents of which is expended, and twenty-five dollars and thirty cents is on hand; flat-boats or scows from 15 to 20 tons can load at Mt. Clemens, and move through the old locks as they are at present braced as far as Utica; an expense of from $25 to 50, on the old locks, except the broken lock, would place them in a situation to admit boats to pass through them, from 40 to 50 tons burthen, with perfect safety. The removal between Mt. Clemens and Frederick of the loose trash and of some of the standing trees on the north bank of the Clinton river, of sufficient width for one horse to travel, could be made at a small expense compared with the benefits arising from their removal. If the canal should not be used any farther than Utica the coming season, the tolls would not probably exceed $300. There are ten flouring-mills in the vicinity of Rochester, the flour of which would come through the canal if it was in order; all of which is at present taken in some other direction. It is estimated that the tolls the coming season would amount to from $1,200 to 1,500, if the canal was put in navigable order as far as Rochester early in the season. The instruments belonging to the State on this line, are one building instrument, with standard and box, one leveling rod with target, one sur-

veyor's compass with staff, one gunter's chain, 2 rules, 3 field books and two tape lines.

Above instruments are valued at $9452.

DAVID SHOOK,
Superintendent Clinton and Kal. Canal.

Office of Superintendent, Mt. Clemens, Dec. 19th, 1845.

STATE OF MICHIGAN, *County of Jackson, ss.*

I, Eugene Pringle, circuit court commissioner in and for the county of Jackson, do hereby certify, that the foregoing copy of "joint documents No. 4," legislature 1846, marked "exhibit 6," was made by me from the original printed copy shown to the within John J. Adam on his examination; and further, that I have compared the foregoing copy with such original or printed copy, and find the same to agree therewith.

Dated at Jackson, May 15th, A. D. 1854.

EUGENE PRINGLE,
Circuit Court Commissioner.

"Exhibit F," referred to in the Desposition of Oliver C. Comstock, jr., hereto annexed.

Copy.

E. PRINGLE,
Cir't Court Com'r.

Legislature, 1846.—Senate Doc. No. 4.

To the Honorable the Legislature of the State of Michigan.

The undersigned, citizens of said State, desire respectfully to make and submit for the consideration of your honorable body a *propriation* to lease of said State, for the term of thirty years, the Central Railroad, with its appurtenances, &c., and for that purpose the undersigned propose and agree to lease of the said State the said Central Railroad, together with all and singular the fixtures, appurtenances, locomotives, cars, tools, and every thing else thereunto belonging or in any wise appertaining, for the term of thirty years, upon the following terms and conditions, viz.:

1st. The undersigned will pay said State, for the use of said road, fixtures, appurtenances, locomotives, cars, tools and other things thereunto belonging, the interest on the cost of the same at the rate of six per cent. per annum, the same to be paid weekly, monthly, or quarterly, as your honorable body may determine.

The undersigned will obligate themselves to construct and complete said road from the village of Kalamazoo, to the St. Joseph river, opposite the village of St. Joseph, or to the State of Indiana, within five years, provided a grant from the said State of Michigan can be obtained for the construction of the same, on the most eligible route from the said village of Kalamazoo.

3d. The undersigned will also obligate themselves to relinquished said road at the expiration of said time, and surrender possession thereof to the said State of Michigan, with a T rail thereon, in good order, together with all the fixtures, appurtenances, locomotives, cars, tools, and other things thereunto belonging or in any wise appertaining.

4th. The undersigned will also obligate themselves to reduce the present rate of toll for freights on said road at the rate of five per cent. per year, for the first ten years, and at the expiration of ten years to reduce the present rates of toll on passengers ten per cent.

5th. In consideration of the further construction and completion of said road, shall convey to the undersigned, or their heirs or assigns, all the unsold internal improvement land, which has been already located under the grant of the United States, and one half of said lands yet to be located by said State under and by virtue of said grant, said lands to be so conveyed by the State in proportion as the work of the further construction of said road progresses.

6th. The undersigned will further obligate themselves to give security to the State to keep the road in good running order and condition at all times, and that said road, or any part thereof, shall not become dilapidated so that the interests of the State shall suffer in consequence of said lease.

(Signed) JARVIS HURD,
(Signed) C. J. GORHAM,
(Signed) JOHNSON NILES,
(Signed) A. L. HAYES,
(Signed) JOHN F. HAMLIN,
(Signed) B. HUMPHREY.

Detroit, March 11th, 1846.

STATE OF MICHIGAN,
County of Jackson, ss.

I, Eugene Pringle, circuit court commissioner in and for the county of Jackson, do hereby certify, that the foregoing copy of senate doc. No. 21, marked exhibit F, was made by me from the original, the printed copy shown to the witness, Oliver C. Comstock, jr., on his examination; and further, that I have compared the foregoing copy with such original, (or printed copy,) and find thesame to agree therewith.

Dated at Jackson, April 27th, 1854.

EUGENE PRINGLE,
Circuit Court Commissioner.

"Exhibit G," shown to the within John J. Adam, on his examination, and referred to by him May 9th, A. D. 1854; being a copy made by me of a certain printed document then shown to him.

EUGENE PRINGLE,
Circuit Court Com'r.

(Copy.)

Joint Document No. 4.—Legislature, 1845.

Annual Report of the Board of Internal Improvement.

OFFICE OF INTERNAL IMPROVEMENT,
Detroit, December 2d, 1854.

To the Honorable, the Legislature of the State of Michigan:

The undersigned, commissioners of internal improvement, agreeable to the requirements of the law, respectfully report.

On the 9th day of April last, the official term of the Hon. Thomas W. Wells, former president of the board having expired, and he having declined a re-appointment, the present incumbent was qualified as his successor, and entered upon the duties of acting commissioner. The corps of engineers in commission the previous year were continued in service, and Samuel Stone, the former secretary of the board, was reappointed, as his services are still rendered in this office. Immediate and untiring attention was given to the rapid completion of the Central Railroad between the villages of Marshall and Jackson, being some thirty-two miles. Early in June the cars made regular trips to Gridley's station, and within one month thereafter the road was in tolerable running order to Albion, and early in August was completed to Marshall, a distance of one hundred and ten miles from Detroit; the extension of this road has increased its receipts to a very considerable extent, and fully justified the high expectation of the public, as will appear by the tables annexed. The experience of the last year has admonished the board that some department of the government should be clothed with discretionary power for meeting contingencies which may be highly detrimental to the public interest, and for which some special legislation may be required. Durring the most of the past summer the steamboat running from St. Joseph to Chicago, professedly in connection with the Central Railroad, and which indirectly receives a bonus from the State of two thousand dollars per annum, connected herself with the steamboat association, by which the travelling public were subjected to imposition and increased expense, and the public revenue essentially impaired. The stage company owning the line between Marshall and St. Joseph are obnoxious to the same charge, and the public can have no guarantee that a similar fraud upon their rights will not again be perpetrated, unless the legislature in its wisdom shall provide a remedy.

The grading of the road between Marshall and Kalamazoo was put under the contract in October, 1843, and $\frac{98}{100}$ of the same was completed and accepted within one year thereafter; the contracts for timber on the road have been generally fulfilled, and the roads are being built by thorough and competent mechanics, who will undoubtedly have them completed by the first day of June next ensuing. The laying of superstructure was let at reasonable rates, and the work has rapidly progressed. About one-fourth the whole distance (36 miles) is now ready for the iron, and the balance will be completed in July next; notwithstanding

the unexampled rapidity with which this road has advanced, the work has met the entire satisfaction of the engineers, and, indeed, will be the best portion of the line, being constructed upon the most favorable soil and of the best materials. Should there be no delay in the receipt of iron, the board see no reason why the cars may not perform regular trips to Kalamazoo by the first day of August next.

The receipt for the year ending December 12th, compared with the receipts of the preceding year, exhibit a large increase of business, and it should be borne in mind that this augmentation of business and receipts have been unattended with any considerable increase in the running expenses; one new engine has indeed been purchased, but it was put upon the road late in the season, and no extra number of men have been or will be required for the present; on that account, this engine is capable of performing one-third more service per trip than those heretofore used, and is so constructed that in running over the road at the rate of ten miles an hour, the road actually sustains less damage than by the operations of smaller engines which go with more more velocity. The small number of engines upn our roads, compared with the amount of business to be done upon them, has heretofore compelled the board to allow them to be pushed to their utmost capacity consistent with the safety of passengers and freight, notwithstanding their conviction of its serious injury to the roads; this unfortunate necessity is now partially obviated, but can never be entirely remedied untill the roads *the roads* are fully stocked with motive power; the expenses of keeping the roads in good running order the past season, was very much enhanced by the unprecedented and continuous rains. The fall, however, having been extremely favorable the board are enabled at the present time to report them in excellent condition.

One item of expense we beg particularly to mention, with the reasons which influenced us in making so large an outlay. Allusion is made to the erection of a warehouse in this city—the warehouse heretofore occupied (belonging to the Farmers and Mechanics' Bank) was *to* remote from the office of internal improvement to be, as is quite desirable, under the immediate observation of the acting commissioner; was too small for the wants of our increasing business; was, at best, a poor building, and in bad repair, and for the use of which the State was paying an annual rent of three hundred and sixty dollars. Under the present arrangement, it is believed that ample room is secured for the business of the board for at least five-sixths of the year, and all other objections to the old warehouse entirely removed; we are also enabled to dispense with the services of the watchman heretofore employed for the security of the old warehouse and public dock.

The board have had under long and continued deliberation the extension of the railroad the ensuing summer, and the result of their deliberations is the solemn conviction, that no new ground should be broken. The appropriation of land for the prosecution of our public works, heretofore made, and the large amount of outstanding warrants and interest bonds, now, by law, receivable for those lands, constitu-

ting more than sufficient already, should they be so applied, to take in all the unsold portion of State lands available for purposes of internal improvement, would seem to have left no means at present at all adequate to vigorous prosecution of either the Central or Southern road, objects of which, if the State had the means, would be vastly dessirable. Should the General Government, however, make a further grant of land for purposes of internal improvement, the public would call for an immediate extension of our railroads, and with this aid the object could be attained without any augmentation of public debt. The citizens of the western and southern counties of this State will feel most severely and injuriously, what, we trust, will be but a temporary suspension of construction, nevertheless, from their known intelligence and patriotism, we doubt not they will most cheerfully acquiesce in the policy recommended.

In June last the Palmyra and Jacksonburgh Railroad was purchased for the sum of twenty-two thousand dollars at a sale under the act authorizing a loan of twenty thousand dollars to that company, and has thus passed under the supervision of this board; that portion of this road, from its junction with the Southern road to the village of Tecumseh, was, some two years ago, gratuitously fitted for the iron by the enterprising citizens of that place, under an agreement with the directors of the Erie and Kalamazoo Railroad Company, that it should be forthwith ironed and stacked. That company having failed to comply with their engagements, the road has been suffered to dilapidated, and would require at the present time the expenditure of some ten thousand acres of land before it would be in a suitable condition for ironing; the Valley of the Raisin, and the contiguous country finding a market for their surplus wheat at the mills upon that river and its tributaries is of the very best quality, and is under a high state of cultivation; if that portion of the road was completed it would divert to the Southern road and our own parts the productions of our own soil, and thereby withdraw from a foreign corporation and foreign port their principal if not their only means of subsistence. The frieghting business alone, between Tecumseh and Monroe, may be safely set down at forty thousand dollars per annum; what proportion of this sum is paid to the Erie and Kalamazoo Company cannot positively be known, but it is estimated by competent business men, that at least one-half or two-thirds of this amount takes that direction. The true importance of the Southern road can never be fully known until the entire business which legitimately belongs to it shall be done by it. Nothing, in the opinion of this board, will so immediately and successfully accomplish this object as the completion of the small portion of road indicated above. The La Plaisance Bay road which was occupied by the State at the expense of thirty-two thousand five hundred dollars, produces no revenue, and affords no facilities for business, which might not be secured by private enterprise. Should the legislature direct the abandonment of this road, and authorize the completion of the Tecumseh

Branch of the Palmyra and Jacksonburgh road, the transfer of the iron, one to the other, would complete the latter about one-half the distance; the board deemed the subject of such vital importance to the business reputation of the Southern road, that they beg most respectfully to urge its merits upon the consideration of the legislature; the recommendation of the road between Monroe and Adrian, and other indispensable repairs has absolved the entire receipts of the Southern road, as was intimated in the last report from this office: it is now reported in good order, and can be continued in good condition hereafter at a much smaller expense than has heretofore been required; the gross receipts of the Southern Railroad for the ensuing year, if the connection of the Palmyra and Jacksonville road therewith should be authorized and provided for by the legislature, and consummated before the ensuing fall business commences, might safely be estimated at one hundred thousand dollars.

The estimated expense of keeping the Central Railroad in good repair the ensuing year, is thirty thousand dollars. *The estimated expense of keeping the Central Railroad in good repair the ensuing year, is thirty thousand dollars.* Should the bridges on the line require any extraordinary repairs, the amount must be proportionally increased.

Central Railroad—Receipts for the year ending Nov. 30th, 1844, for the Transportation of sundries, as follows:

52,241½	passengers	$83,551 03
10,089,056	lbs. merchandise	33,255 31
4,480,334	agri'l product'ns	6,704 77
1,094,222	lbs. ashes	2,139 25
155,645	" vehicles	830 69
420,304	feet lumber	431 14
2,026¼	M shingles	858 67
127,029	bushels wheat	15,055 77
144,234	lbs. flour	57,933 90
6,909	bbls. salt	4,167 92
	Carried forward	$204,928 45
	Brought forward	204,928 45
420	bbls. fish	264 30
3,861	" whiskey, beer, and cider	1,161 43
9	cords wood	12 87
	Domestic animals	80 73
	Old iron	419 70
	United S. mail	4,302 36
		$211,163 84

Expenditures for running and repairing Road, for the year ending Nov. 30th, 1844.

Detroit station	$4,528 81	
Dearborn do.	1,146 71	
Wayne "	947 04	
Ypsilanti "	1,324 24	
Ann Arbor "	1,523 92	
Dexter "	997 58	
Davison "	710 87	
Grass Lake "	986 62	
Jackson "	1,645 31	
Gridley's "	607 03	
Albion "	675 00	
Marshall "	906 97	
		$15,999 50
Repairs machinery and cars	$17,726 46	
Freight and passenger trains	6,170 94	
Repairs of road	32,723 97	
Pay of engineers	7,968 10	
Old account	3,886 70	
Wood account	4,943 84	
		$73,240 01
		89,419 57
		$121,750 33

Nett profit, disbursed as follows:

Paid State treasurer	$25,345 41	
Iron acc't C. R. R.	43,188 55	
Carried forward	$68,528 96	
Brought forward	$68,528 96	
Iron acc't S. R. R.	14,240 98	
New locomotive, S. road	12,231 44	
New warehouse	1,824 88	
New locomotive, C. R. road	155 31	
Construction	1,855 56	
Building new cars	19,976 46	
		$118,813 59
Cash on hand		$2,936 74

The review of the last year's business indicates with great clearness the capabilities of the road, its growing importance, and the well-grounded data which enabled the late board confidently to predict, that the receipts of the year now would exceed two hundred thousand dol-

lars; that this has been attained, and indeed exceeded, is attributable, in a great degree, to a persevering adhesion to the system of policy marked out by the distinguished president of the Board of Internal Improvement. The late extension of this road, in connection with its past history, inspires the firm persuasion, that the gross receipts of the coming year will not fall short of two hundred and seventy-five thousand dollars. Should our next harvest be as abundant as the present appearances of our wheat-fields indicate, as a greater number of acres have been sown than in any previous year, the computation will most probably be too low; if, on the other hand, the crops should be cut off, it may be somewhat too high. At all events, we aim at a thorough preparation for doing any amount of business which offers. One addition of two 8-wheeled passenger cars, and 2 baggage cars, now in progress of construction, will enable us to confer better accommodations upon the traveling public than it has been in our power ever before to have afforded. The apology, if any were necessary, for investing more money in passenger cars, is found in the fact, that the increase of passengers on this route for the past year over the preceding one, is 70 per cent., as will appear in reference to the following table:

Year.			Total.
1838			$39,307½
1839			26,804½
	Out.	In.	Total.
1840			$29,165
1841			25,418
1842	15,876	14,764	30,640
1843	16,259	14,384	30,643
1844	27,266	24,515½	52,241½

To complete the Central Railroad from Marshall to Kalamazoo, which includes the bridging of a car-house at Kalamazoo, the station buildings at Galesburgh and Battle Creek, necessary side-tracks, turnsround and wells, the settlements of damages for right of way, and payment of the retained per centage at the time of the re-letting of the work, a farther appropriation of twenty thousand acres of land is required. The opinion of the board is, that this appropriation will cover all just expenditures and demands, and enable them to push the work to a rapid completion; without it, they apprehend great difficulty and delay. The present amount of indebtedness for iron, spike and machinery, payable out of the nett receipts of the Central and Central and Southern roads, including the bonds issued and the amount due the Utica and Schenectady Railroad Company, for iron purchased the past summer, and for which bonds have not been given, is as follows:

Due at the present time	$6,843 54
Falling due prior to July 1st, 1845	39,913 72
Amount payable at an indefinite time	22,787 51
Total debit to this account	$69,544 77

The above amount due at special periods we hope to meet early next summer; and should the spring open as favorably for business as is now anticipated, we hope to be able to pay the whole of above amount during the season. The extinguishment of this debt is the most desirable from the fact, that subsequent to the period named above, the nett receipts of all that portion of our public works now producing revenue will be absorbed in the payment of interest upon our public debt, agreeably to act approved March 8th, 1843.

Some portions of the work under contract are being or have been completed. Notwithstanding the appropriations for those specific works were exhausted, the board think it due to themselves to remark, that in allowing those works to go on to completion, they came reluctantly to the opinion, *than* abandonment when nearly completed would lay the foundation for an application to the legislature for damages greater even than the amounts of the estimates beyond the sums stipulated in the contract. In accordance with this view, the board is permitting the completion of the Clinton and Kalamazoo canal between the village of Frederic and Rochester, and the construction of the feeder. Agreeably to the acts approved March 1st, 1843, and March 2d, 1844, the lettings are in strict conformity to law, and the gross amount of the contracts were less than the amount of the appropriation. The extent of dilapidation, only developed as the work progressed, was found to be much larger than was apprehended when the work was commenced, and had been no doubt very much increased since the estimate of the chief engineer, made some two years before the amount estimated, beyond the appropriation (which is all exhausted) for this extra work, and in payment of which the contractors look to the legislature, will be communicated, if desired, whenever the engineer in charge shall have made his final report.

The unprecedented high stage of water in the St. Joseph river during the entire summer past has prevented the improvement of its lower portion. The sum of $1,041 66 has been advantageously expended between Union City and Sturgeon lake, a distance of twenty-one miles; balance of appropriation unexpended $17,708 34. Should the ensuing summer prove favorable for the further prosecution of this improvement, immense good may be anticipated from it. Those who will be more immediately benefited by it, and who have not heretofore shared very largely in the advantages of public expenditure, will with great justice demand a prosecution of that work at the earliest possible moment.

The contracts for clearing the flood-wood and otherwise improving the navigation of Flint river, from the village of Flint to the Saginaw river, were entered into early in the summer, and the work has progressed in a satisfactory manner. The contracts amount to $5,850 00, leaving an unexpended balance of $400 00. A part of this balance will be expended in paying the agent having charge of the work.

D. Ferguson, jr., esq., under the instruction from this office, has made a laborious examination into the condition of the timber and

other materials for the construction of the Saginaw canal. The hewn timber has much of it gone to decay. Some has been used in the erection of bridges, barns, houses, and mills, and the residue is claimed by the owners of the soil upon which it is rotting. These individuals hold that the State has no right to use the timber for any other purpose than that for which it was originally designed. Some small part of the timber has been drawn together, but by far the greater part is scattered over a large tract of land, lying either upon the ground or slightly elevated upon the blocks upon which it was hewn. The board are of opinion, that valuable as the remains of the seventy-one thousand dollars invested in this Saginaw Canal project may be, it is still exceedingly doubtful whether it will fully cover the costs of further prosecution.

Two hundred and eighty-seven dollars and twenty-one cents have been paid the current year upon a contract of 1841 for the improvement of Maple river, and the further sum of eight hundred and eleven dollars and thirteen cents is now due.

The whole number of miles run the past year by the six locomotive engines which have been on the Central road during that time is one hundred and thirty-eight thousand and ninety-six miles, averaging twenty-three thousand and sixteen miles per each engine. The whole number of days run is fifteen hundred and twenty-four and a half, and the average daily performance is ninety-one miles. The engine "Marshall," in charge of Mr. Francis Puegat, has run in two hundred and sixty-one days twenty-five thousand five hundred and ninety miles, and his engine is kept in superior order; indeed, upon no railroad in the Union is the machinery kept in so uniformly good order as upon the Central road of this State. No person has been injured upon any of our public works the past year, which is a pretty good proof that the men employed are careful and competent.

The reports of John H. Cleveland, esq., superintendent of the Southern road; and John M. Berrien, chief engineer, *accompanying* this report, and are referred to for more ample information in reference to the works immediately under their control.

All which is respectfully submitted.

O. C. COMSTOCK, Jr.,
ROBERT P. ELDRIDGE,
JOHN J. ADAM,
Commissioners of Internal Improvement.

Statement of the property of the State of Michigan under the charge of the agents of the Board.

Three writing-desks, 4 tables, 5 chairs, 3 stoves and pipe, 3 paper cases, 1 wash basin, 2 pails, 1 pitcher, 1 water pot, 1 *wash basin*, 1 basin for stove, 3 stools, brass candlesticks, ($109 75,) 30 lbs. of sperm candles, 1 tin dust-pan, 1 duster, 1 broom - - - - - - -	$109 75
1 iron safe with two sets of keys, cost - - - -	315 00
1 set of books of Board of Internal Improvement.	
1 do. Acting Com'r C. R. R.	
1 do. Detroit and St. Joseph R. R. Company.	
2 fire shovels, 1 pair tongs, 2 coal kettles, 1 poker - -	3 25
1 Farmers' map of Michigan, 1 do. of Detroit - -	7 00
1 large map of the United States - - - - -	10 00
Lot of maps and profiles of the different public works of Michigan; 5 do. maps of Michigan; lot of stationery of all kinds - - - - - - - - - - -	30 00
Sundry public documents and papers, contracts, vouchers, reports, &c., &c., session laws from 1837 to 1844, inclusive.	
4 levelling instruments and staffs - - - - -	200 00
1 surveying compass and chain - - - - -	26 00
1 transit, 3 measuring tapes, 4 book cases and chest -	33 00
	$734 00

Account of stock and tools in car shop, Detroit, under charge of George Gibson.

12 work benches, at $10 - - - - - - -	$120 00
2 double do. at 8 - - - - - - -	16 00
4 stoves and pipe - - - - - - - -	50 00
18 new hand-screws - - - - - - - -	18 00
19 old do. - - - - - - - -	9 50
19 flat files - - - - - - - - -	5 94
19 doz. hand low files - - - - - - - -	17 63
12 car door locks - - - - - - - -	6 00
12 papers 21 oz. tacks - - - - - - - -	2 63
303 gross screws - - - - - - - -	151 50
6½ doz. padlocks - - - - - - - -	8 75
3 casks nails - - - - - - - - -	15 00
4 sledges - - - - - - - - -	2 50
2 copper glue kettles - - - - - - - -	5 00
1 iron furnace - - - - - - - - -	1 25
1 board rule - - - - - - - - -	50
1 tape line, $1 50, 1 spirit level, $2 50 - - - -	4 00

30 saw benches	$15 00
2 large trussels for putting in pedestal	2 50
Crane, windlass, and tackle	50 00
150 feet 4-inch rope	15 00
3 single blocks	3 00
4 trucks for shifting cars	15 00
2 slates	38
6 pair match planes	4 50
13 moulding planes	13 00
2 saws	1 50
1 cross-cut saw	3 00
19 augers	9 50
1 steel square	2 00
1 slick	1 00
2 hand axes	4 00
4 bench planes	3 00
1 trying square	38
7 wrenches	3 50
1 grindstone	2 50
2 doz. draw bore pins	1 00
1 gal. oil and jug	1 50
Part keg white lead	1 00
Windlass for taking up cars in paint shop	10 00
1 bbl. glue, 129 lbs., at 16 c'ts	20 64
500 lbs. curled hair	120 00
200 y'ds fringe, at 25 c.	30 00
161 y'ds canvass, 1 S. and 2 d.	30 18
12 y'ds cotton cloth, at 9 c'ts	1 08
12 bunches cotton cord	2 25
¾ lb. thread	75
Lot tuft and tacks	1 00
1 frame for drying car sashes	4 00
1 hollow auger and bit	2 50
6 quires sand-paper	1 25
Cloth lace and trimmings for two passenger cars	175 42
1 desk and inkstand	1 75
1 passenger car unfinished	475 00
2 baggage cars unfinished	250 00
1 large passenger car	5,000 00
1 small do do	2,000 00
2 baggage do	500 00
4 8-wheeled freight cars	1,800 00
89 four-wheeled do	25,500 00
15 racks	2,450 00
15 canvass covers for racks	510 00
1 snow plough	200 00
8,000 feet clear pine lumber, at $16 per M.	128 00

500 feet cherry boards	$15 00
22,765 f't ash and white wood lumber, at $8 and $11 per M.	227 00
	$40,062 92

Invoice of Machinery, Tools, Stock, &c., at and belonging to machine shop C. R. R., under charge of W. F. Chittenden.

7 locomotive engines with the small tools belonging to same	45,500 00
4 sets blacksmith tools complete	400 00
9 vices	108 00
3 screw-plates with taps and dies	60 00
1 turning lathe, with slide rest and small tools, complete	100 00
1 large lathe, incomplete	200 00
3 drill braces, and drills for same	45 00
1 portable forge	20 00
1 large punching machine	100 00
1 R. R. wheel press, complete	150 00
1 small wood car	40 00
4 wood saws	4 00
2 narrow axes	3 00
2 oil cans	20 00
4 stoves and complement of pipe	130 00
3 new locomotive cranks, say	300 00
3 tires for driving wheels	150 00
4 do. truck	100 00
400 cords wood	700 00
3 tons stonecoal	150 00
300 bushels charcoal	12 00
27 dozen assorted files	216 00
7000 lbs. cast steel, assorted sizes	140 00
3 tons bar iron	240 00
7000 lbs. old cast iron	70 00
2000 lbs. old copper flues, &c.	300 00
29 bbls. summer strained lard oil	450 00
4 tons of old wrought iron	120 00
80 car axles	1,200 00
10 pairs track tenders and ten car wheels, extra	1,000 00
5 pairs driving wheels, extra	2,500 00
12 pairs truck wheels, new	192 00
5000 lbs. castings, new	400 00
4500 lbs. spring steel	315 00
5 sets car springs, extra	200 00
1 truck for engine Jackson	60 00
12 small shop lamps	2 00
2 globe lanterns	3 00

12 sets hose for locomotives	$50 00
1 locomotive truck, extra	250 00
2 locomotive bells	40 00
4 R. R. wheel patterns, small brass pattern for 6 engines, 1 set turn-round patterns, 18 frog patterns, 1 set of lathe patterns, 1 set passenger car patterns, 1 set freight car patterns, 1 large 4-feet stove pattern	1,500 00
1 set pattern makers' tools	25 00
6 Mareviz locomotive lamps	180 00
	$57,745 00

List of property under the care of the Weighmaster, Detroit, December 1st, 1844.

1 horse	$100 00
1 cart	10 00
1 chain and whippletree	2 50
3 sett harness	10 00
1 blanket	2 00
2 whips	1 50
1 curry comb, 1 brush	25
15 bushels oats	3 75
2 platform scales, Fairbanks	170 00
1 platform scale, not in use	85 00
3 trucks	45 00
1 four-wheeled truck	5 00
1 platform for weighing	50
12 lamps on post	6 00
3 lanterns	7 50
1 oil flask	25
2 spades	1 50
1 crowbar	1 00
2 pails	37
12 bbls. and 5 kegs lard, 3000 lbs.	195 00
58 kegs spikes, "200"	225 00
35 kegs spikes, "100"	218 37
1 table	2 00
3 chairs	94
2 inkstands	25
1 sand box, 1 wafer box, 1 rule	25
2 table lamps	66
1 stove and pipe	6 00
1 sprinkling pot	25
1 fire shovel	25
1 doz. brooms	75
	$1,104 84

Inventory of State property in use on the Central Railroad, from Detroit to Marshall.

57 shovels and spades, value about	$57 00
14 picks	21 00
27 iron bars	27 00
28 axes	35 00
36 spike and nail hammers	25 00
3 cart hooks	5 00
20 cold chisels	7 00
20 punches	2 50
9 wedges	2 00
18 wood and repairing cars	1,050 00
6 horses and harness	360 00
2 wagons	30 00
32 buck and handsaws	32 00
26 stoves and pipe	300 00
15 pails	4 00
25 wheelbarrows	40 00
6 grindstones	5 00
30 lamps, lanterns, and candlesticks	40 00
19 chairs	20 00
12 oil cans	5 00
4 platform scales	166 00
6 saw sets	3 00
9 tables and desks	40 00
4 shovels and tongs	1 50
8 inkstands	4 00
2 drills	1 00
1 square	33
18 spike punches	2 50
Also at Ypsilanti and Davison's station, 2 pile hammers	180 00
	$2,459 88

List of property on the line of Clinton and Kalamazoo canal, belonging to the State of Michigan.

1 leveling instrument, with standard and box	$55 00
1 leveling rod, with target	4 50
1 surveyor's compass, with staff	30 00
1 Gunter's chain, 66 feet long	2 00
1 rule, 4 feet long	50
1 do. 1½ f't do.	14
3 field books	2 25
1 tape line	13
2 pumps made for pumping water out lock pit No. 1	3 00
1 set models to cast irons for lock gates	8 00

48 perch of stone, at $1	$48 00
260 do. do. do. 70 ce'ts	182 00
	$335 52

Invoice of property at the mouth of St. Joseph river, in charge of J. E. Sutherland & Co.

9 socket poles	$3 00
3 oars and 2 boat-hooks	2 00
1 cable chain, say	20 00
8 lines	15 00
3 pair rock nippers, 1 rock hook, and 1 crowbar	6 00
2 cross-cut saws	6 00
5 axes and sledge	6 00
2 iron blocks and chieves	2 00
1 grindstone	1 50
1 anchor, say	2 00
1 pair double blocks	3 00
1 cooking stove and furniture	10 00
3 jugs, 2 jars, 4 tin and 1 wood pail	1 75
2 oil cans, 3 tin pans, 1 coffee pot	1 50
10 plates, 3 earthen dishes, 2 pitchers, and 11 bowls	1 00
11 cups and saucers, 8 knives and forks, and 3 spoons	1 50
10 bedticks	5 00
1 snag machine	50 00
1 covered scow	25 00
	$178 00

Grand Rapids, in charge of D. Ball:

3 scows, 1 shaft with iron gudgeon on each end, 1 bevel, 1 set blocks, 1 pile-driving hammer.

Report of the Superintendent of Southern Railroad.

To the honorable the Board of Internal Improvement:

The undersigned has the honor to report that the receipts on the Southern Railroad, for the year ending Nov. 30th, 1844, were $60,340 51, which, but for the unusually short wheat crop in this section, as in most other parts of the State the last season, would have been considerably increased.

The following are the expenditures for the year:

Repairs of road	$26,010 58
Building and repairing of cars	14,038 84
Original construction of road	1,012 73

For running cars, viz:

Pay of engineers	$4,833 97
Wood	2,601 17
Oil	1,330 25
Monroe depôt	2,142 78
Ida station	533 54
Palmyra station	658 74
Petersburgh station	420 01
Adrian station	1,373 64
Pittsford station	314 50
Clayton station	459 95
Hudson station	187 33
Hillsdale station	7,257 40
Freight and passenger trains	3,180 44
	$60,355 87

Amount overpaid by superintendent	$15 36
Do. do. do. last year	38
	$15 74

It will be observed that a large amount has been expended the past season for repairing the road. In my last report I stated the necessity of reconstructing a large portion of it between Monroe and Adrian. At that time it was supposed that most of the track west of Adrian would require ordinary repairs, having been used only a part of the previous year; the rails and ties, however, having laid several years subject to the action of the weather, had become much decayed, and the heavy and almost continual rains which have prevailed the past year saturated the already decaying timbers with water, so as to make it necessary to expend there also an extra amount for repairs on other portions of the road leading from the depôt at Monroe to the ship canal *lea*ding of about one mile in length, not used until last year, and which, laid with cedar ties and otherwise apparently well constructed, was found to be in such a condition as to require to be rebuilt, with the exception of a portion of the mud-sills. Several bridges, some of which have been in a precarious condition, have also claimed a large share of attention and expense, particularly the one at Petersburgh, across the river Raisin, which has at considerable expense been substantially and permanently secured.

Another considerable item coming under the same head of expenses will also appear, which properly belongs to construction, a work which ought to have been thoroughly done when the road was constructed. I allude to the opening of ditches on both sides of the track where the road passes through excavations. Generally in such places the founda-

tion rests on quick-sand, and a thorough draining is therefore particularly necessary then to preserve the superstructure. The process of filling in such places, and covering the entire track by slides from the banks, has been progressing for several years, but more especially the present year, in consequence of heavy rains.

No alternative was left but to excavate and remove the large bodies of earth; and to make suitable ditches to do this, it was necessary to build cars for the purpose and remove the earth when excavated, in some cases to a great distance, in order to find a convenient place of deposit. This work is now nearly completed, which renders the foundation secure and the track clear. The side-tracks and the switches, which were improperly built at the depôt of Monroe, have this year been rebuilt and otherwise improved. Two new side-tracks have been laid down at the canal landing, and a purchase of five hundred dollars' worth of railroad iron for the use of the side-tracks constructed.

I also stated, in my last report, the disadvantage of keeping the track in good order, for the want of spike, with which the road had never been half supplied. I have to inform you that large purchases of a very superior article of spike have been made, most of which has been used, greatly improving the condition of the track in this particular.

All opinions seem to concur, that it was wisdom and sound policy to appropriate the earnings of the road the past year to a thorough repair of the track and the building of the requisite number of additional cars, &c., to do the business coming to the road. Early attention was given to this policy, and measures taken which secured at an early period a sufficient amount of material for the purpose. In this we have been successful, notwithstanding the season has been unpropitious for accomplishing so much. The track was very early in the season got into such a state of repair, that with the continued improvement during the season we have been able to run the road with perfect regularity and without serious accident. The road is now in excellent condition, and with proper attention can be kept in good order at a small expense.

By reference to the inventory hereto annexed, it will appear that a large amount of material and wood remains on hand for future use. There has been added to the stock of cars on the road this year sixteen new freight cars, one complete; two more eight-wheel passenger cars, and one large double rack, at a cost of $7,992.

1 pair of extra driving wheels, 1 extra crank	$767 00
13 repairing, dirt, and timber cars	585 00
Wood, ties, nails, and timber on hand	3,237 69
1 horse purchased this year	80 00
Spike on hand	266 00
Railroad iron purchased for side tracks	500 00
New castings on hand	348 92
Spring steel on hand	369 52

Stoves, clocks, harness, and sundry small articles for use of road, as per vouchers, not above enumerated		$460 00
Car lumber on hand		48 00
Carried forward		$14,654 13
Brought forward	$14,654 13	
Extra transom plates		68 00
2 sets repairing wheels		45 00
10 car axles, new		180 00
On original construction		1,012 00
New wheels furnished to cars already on hand		1,000 00
Old claims paid		1,058 67
		$18,018 53

The above is shown as nett profits, besides a large amount charged in with repairs of road which cannot be correctly estimated.

On the first day of July last the State commenced carrying the U. S. mail on this road at $3,000 00 a year. One quarter's pay fell due on the first of October, but has not been received from the department.

All of which is respectfully submitted.

J. H. CLEVELAND,
Sup't S. R. R.

Statement of property on Southern Railroad, belonging to the State of Michigan, under charge of Geo. Scott, Sup. Rep. Road.

3 large timber cars	$600 00
4 dirt cars	400 00
15 repairing cars	1,050 00
22 claw bars	22 00
29 spike hammers	29 00
10 spades	7 50
17 shovels	11 00
17 picks	25 50
9 cart hooks	13 50
3 cross-cut saws	12 00
5 tie saws	3 00
17 wood saws at stations	25 00
3 augers	3 00
2 sets *and* cold chisels	25 00
6,400 lbs. spike	400 00
1 horse and 1 set harness	85 00
7 axes	7 00
3 adzes	6 00
3 wheelbarrows	9 00
2 grindstones	3 00
1 steel square	2 00
14 chalk lines	75

4 drills	$1 00
3 stoves at stations	25 00
4,000 feet square timber	24 00
5,342 ties	647 25
3,500 feet of nails and ribbon	280 00

At different stations on the Road.

1,885 cords wood at 8 p.	$1,885 00

Under charge of R. Livingston, Sup't Car-shop.

6 moulding planes	6 00
16 augers	12 00
7 work benches	70 00
149 patterns	500 00
2,000 feet pine lumber	20 00
9,000 feet of cherry lumber	27 00
41 freight cars	12,000 00
3 four-wheeled racks	800 00
3 four-wheeled racks without springs	400 00
2 eight-wheeled racks	700 00
2 new eight-wheel passenger cars	2,500 00
3 small passenger cars	900 00
1 baggage car	250 00
1 set transom plates for double car	15 00
2 freight car frames	150 00

Under charge of J. S. Kingsland, Sup't Machinery.

4 locomotive engines	$23,000 00
4 punch bars	12 00
6 small oil cans	3 00
4 pails	2 00
4 hammers for engines	4 00
40 wrenches for do.	80 00
6 cold chisels	3 00
2 shovels in depôt	2 00
50 lbs. lead	2 50
4 sandboxes for engines	6 00
10 axles, new	150 00
500 bolts, forged, assorted	62 50
1,000 car irons, different sizes forged,	125 00
100 switch irons	72 00
3 copper flues for engines	15 00
2 pair bellows	40 00
6 anvils, 16 pair tongs, 2 hammers, 25 set hammers and punches, 6 mandrills, 1 crane, 2 vice benches, 2 vices, 1 hack sand, 3 plates and dies, 25 tapes, 6 wrenches for shops, 2 reamers, 1 set spring tools, 12 files, 3 sledges, 1 set tools, 2 tool boxes in shop, 3 rings, vice	250 00

2 setts repair wheels	$50 00
2 tons old metal	60 00
13 new car springs	120 00
1 lathe and tools and band wheel	200 00
1 grindstone	2 00
1 large stove in depôt	30 00
1 large tin oil can	10 00
1 pair patent scales	75 00
1 ball packing, 1 roll wire for spark-catcher	5 00
6 oil cans for depôt	3 00
25 feet stovepipe	3 75
1,000 scraps steel	60 00
8,000 scrap iron	120 00
1 large lamp for engine	30 00
1,300 bushels charcoal	65 00
30 lbs. old brass	4 50
50 " " copper pipes	7 50
1 new crank for engine	100 00
460 lbs. brass castings	138 00
2 setts calking iron for flues	10 00
3 small bells for engines	2 00
1,000 hard coal	2 50
1 side sole leather	3 50
40 lbs. soft sodder	7 50
125 lbs. short iron	6 25
400 lbs. round iron	3 25
1 iron square	75
1 soldering iron	1 00
1 desk	1 00
12 brooms	1 50
8 jack screws	64 00
4 tallow cans	4 00
1 set for cleaning boilers	3 00
1 rake and coal box	2 00
1 band wheel car	40 00
2 wheelbarrows	9 00
1 large box to contain bolts, 1 rack frame for iron and steel, 1 coal basket	2 50
10 extra coupling chains	10 00
5 lbs. sal almonia	1 00
3 drill sticks, 2 drill bits	15 00
1 broken crank	25 00
2 jacks for raising cars	20 00
2 spades	1 50
1 strata bar	1 50
1 sheepfoot bar	1 00
2 woodsaws	3 00

1 axe	$1 00
4 bbls. tallow	60 00
2½ " lard	45 00
1 lard kettle	4 00
20 gallons oil	25 00
2 kegs nails	11 20
5 oil casks, 1 gallon measure, 1 turned	1 00
2 fire shovels	1 50
1 lot truck wheels, for engines, not perfect	50 00
10,736 lbs. castings	375 00
4,619 do spring steel	325 00
900 do square and flat iron	45 00
672 do band iron, assorted	67 00
1,000 do old iron tire	25 00
1 horse and harness	80 00

At the office, Monroe depôt:

1 black walnut table, 1 covered table, 1 long writing-table and desk, 2 stoves and pipe, 1 pair shovel and tongs, 8 chairs, 1 inkstand, 2 sand boxes, 1 wafer box, 1 leather stamp, 2 rules, 2 quires paper, 4 ledgers, 1 journal, 2 day books, marked journals, 4 blotters for daily entry, 1 large freight book, 2 large books, *books*, freight way-bills, 1 passage way-bill book, 2 bundles quills, 1 large writing desk, ½ ream way-bills, 4 lard lamps, 6 candlesticks, 2 pairs snuffers, 1 water pail, 1 wash bowl, 1 tumbler, lot passage tickets, 3 sticks sealing wax, 2 pieces tape, 1 iron fender, 2 spit boxes, 1 bottle red ink, 1 bottle blue ink, 1 bottle ink, 1 desk stool, 1 long table, 1 oil jug, 1 oil can, 1 copper-laid can, 1 clock, 2 lamps, 1 iron chest, 1 pair andirons, 2 brooms, 1 dust brush, 10 lbs. rope, 1 bed cord, 1 small slate, 3 pocket books, for trains; 1 pair scissors, 2 balls twine, 1 large sponge, ¼ ream passage way-bills, 1 night lamp, 16 padlocks for cars - - - - - - - - - - - 500 00

At Adrian station:

1 desk, 1 black walnut table, 2 inkstands, 1 sand box, 1 letter stamp, 1 chair, 1 stove and pipe, 1 pair shovel and tongs, 1 lamp filler, 1 horse and harness - - - 100 00

At the Hillsdale station:

1 writing case and desk, inkstand, 1 sand box, 1 pair snuffers, 1 pair tongs, 2 stoves and pipe for the same, 1 iron candlestick, 6 chairs, 1 clock, 1 horse, 1 set harness, 1 chain and whippletrees, 2 glass lamps, 1 ash pail - 150 00

Total amount - - - - - - $410 24

Report of the Chief Engineer of the Central Railroad.

O. C. COMSTOCK, JR., ESQ.,
Acting Commissioner.

SIR: At the close of the last year, the Central Railroad was in course of construction from the village of Jackson, westward to Kalamazoo, a distance of about sixty-eight miles. On the seventh and eighth divisions, extending to Marshall, the grading was complete, the bridging in progress, materials for superstructure for the most part in readiness, and the labor of laying down the track about one half performed. Contracts were made shortly after for building car-houses at Jackson and Marshall, and also for the station buildings, side tracks, &c., at Albion and Gridley's, as well as such other works as had not previously provided for.

During the winter the laying of the timber was of course suspended, but every thing done that could expedite the progress of the work, on the return of spring; and although the season opened very unfavorably, yet by the middle of May the track was laid and ironed as far as the first station, ten miles beyond Jackson, and the daily trips of both passenger and freight trains were extended to that point. On the second day of July the road was opened to Albion, ten miles further, and finally to Marshall, on the 12th day of August. Many of the jobs were at that time unfinished, but have since been prosecuted to completion without interruption to the cars, and upon those two divisions there remains but one unsettled contract, which is of no consequence as regards the use of the road.

On the ninth and tenth divisions from Marshall to Kalamazoo, the whole line was placed under contract in the summer and fall of 1843, for grading, bridging, and finishing materials for the track; the most of these contracts were completed by the first of September last. In the prosecution of these jobs some delays have occurred, for want of the right of way, but such difficulties are now as to admit of the construction of the work, and it is probable that a couple of months will suffice for the completion of all the unfinished grading. About four-fifths of the timber has been obtained and is in readiness upon the line; the small amount still required will easily be procured before it is wanted for use. The contracts for bridging have also progressed satisfactorily; of the bridges over the Kalamazoo river and Battle Creek, *there* are now ready for the track, and the fourth so far advanced as to leave no doubt of its completion in due season. The smaller or vent bridges are either completed or in progress.

The grading upon this portion of the route is generally light, requiring but little time for the consolidation of embankments; with the exception of some three miles, the heavier work unfinished or too fresh for use, was in readiness for the reception of the superstructure; contracts for laying down the track were accordingly made early in that month, for which purpose the line was divided into sections of about two miles each. Upon several of these jobs very satisfactory progress

has been made, and there is at this time between 8 and 9 miles actually laid down, the greater part of which is dressed, ready for the iron.

The laying down will necessarily be discontinued while the ground is frozen, but the timber now lacking will be brought on during the winter, and, together with that already provided, will be framed and made ready for use, which will very much facilitate the work when it is recommenced. Should the spring open favorably, I have no doubt that the work may be completed to Kalamazoo during the summer, and in readiness for the iron by the first of September at the latest.

Contracts are yet to be made for the necessary stations, side-track, fixtures, and also a car-house at Kalamazoo, for all which, however, there is ample time.

Since the date of the last yearly reports certified estimates and accounts against appropriations have been issued as follows:

On the 7th and 8th divisions from Jackson to Marshall	$81,281 25
The 9th & 10th divisions from Marshall to Kalamazoo	160,032 87
Total	$241,314 12

To complete the road to Kalamazoo ready for the iron is estimated as follows:

For grading and ditching		$11,300 00
For timber		10,916 40
Carried forward		22,216 00
Brought forward	$22,216 00	
Bridging		7,947 00
For laying track and dressing roadway		34,478 00
For stations, side-tracks, and fixtures		5,000 00
For road-crossings, cattle-guards, drains, &c.		2,000 00
For car-house at Kalamazoo		6,000 00
		$77,641 00

Respectfully submitted, by your obt ser'vt,

JNO. M. BERRIEN,
Chief Engineer.

Articles in charge of Engineer Department, Central Railroad.

4 transit, probable value	$150 00
5 levels	250 00
6 leveling rods	10 00
2 compasses	50 00
3 chains	5 00
3 flagstaffs	1 00
2 axes	1 00
2 hatches	50

2 stoves and pipe	$20 00
1 drawing table	4 00
4 chairs	2 00
1 writing-desk	8 00
2 tin paper cases	25
2 inkstands	50
1 pail	50
2 small boxes	
1 box drawing instruments, complete	3 00
1 ivory scale	1 00
8 rules	50
3 triangles	50
1 pile-hammer, Battle Creek	75 00
	$582 75

STATE OF MICHIGAN,
County of Jackson, ss:

I, Eugene Pringle, Circuit Court Commissioner for the county of Jackson, do hereby certify that the foregoing copy of "joint doc. No. 4," legislature, 1845, marked "Exhibit G," was made by me from the original printed copy shown to the witness, John J. Adam, on his examination; and, further, that I have compared the foregoing with such original or printed copy, and find the same to agree therewith. Dated at Jackson, May 15th, A. D. 1854.

EUGENE PRINGLE,
Circuit Court Commissioner.

Afterwards, to wit, on the sixteenth day of June, one thousand eight hundred and fifty-four, a notice of motion by defendant for order modifying the injunction heretofore issued in this cause was filed in the office of the register of said court, of which notice the following is a correct copy, viz:

Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY et al.

You will take notice, that we shall move before the said court on Monday, the fifth day of June next, at ten o'clock in the forenoon, (at court-house in the city of Detroit,) or as soon thereafter as counsel can be heard, for an order modifying the injunction heretofore issued in this cause, so that the defendants can proceed to construct the railroad mentioned in the pleadings in this cause, provided they shall undertake not to operate said road within the distance enjoined until the final determination in said cause by said court, or for such other or further orders

as said court may deem proper to grant, which motion will be found upon the files in said cause.

Dated Jackson, May 30th, 1854.

HIGBY & FOOTE,
Def'ts Sol'ts.

To Messrs. VAN DYKE, FRASER & GRAY,
Comp'ts Sol'ts.

And afterwards, to wit, on the said sixteenth day of June, one thousand eight hundred and fifty-four, the complainants, by their solicitors, filed in the office of the register of said court a notice of motion to strike said cause from the docket for the term, accompanied with affidavit, *to* which notice of motion and affidavit are in the following words and figures following, viz:

The Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY et al.

Greets:

Take notice that on Tuesday, the 30th day of May instant, on the opening of court, or as soon thereafter as counsel can be heard, we will move the court—

That this cause be stricken from the docket, and also for an order extending the time to take proofs therein.

The said motions will be based upon the following grounds:

1st. The facts appearing in the affidavit of James A. Van Dyke, a copy of which is herewith served, and the papers thereto annexed.

2. Because, under the circumstances of the case, the party defendant had no right to close the proofs and notice the cause for hearing.

3. Because the cause was regularly called, and, defendants not appearing, was duly continued to the next term.

Yours, &c.,
VAN DYKE, FRASER & GRAY,
Solt's for Complts.

May 23, 1854.

To HIGBY & FOOTE,
Solts. for Defts.

The Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY et al.

WAYNE COUNTY, *ss:*

James A. Van Dyke, being duly sworn, says, he is one of the solicitors for complainants; that on the 10th day of February, A. D. 1854, the solicitors for defendants served a copy of the order for the taking proofs, and a notice, which is hereto annexed, marked "A."

That after the entry of said order, both parties, finding it convenient so to do, disregarded the same, and proceeded to take testimony from time to time, and long after the time fixed in and by said order had expired, as will more fully appear by the testimony taken and returned in this cause; that when the testimony of John J. Adam, on behalf of defendants, was taken at Jackson, it was with an express agreement that the solicitors for complainant should afterwards, if they deemed proper, have the opportunity of having him recalled and cross-examined.

That in the early part of May, 1854, the solicitors for defendants served a notice on solicitors for complainants, which is hereunto annexed, marked "B;" that at the time of the service of said notice, affiant received a letter from one of defendants' solicitors, (Mr. Foote,) stating, in effect, that the examination at Jackson, under the said last notice, could not occupy more than fifteen minutes; that affiant, knowing that the testimony of Mr. Eldridge was intended to cover the same points, and be corroborative of that of Mr. Adam, and inasmuch as affiant had not then had an opportunity of consulting with the counsel associated with him in the cause, as to the necessity of cross-examining Mr. Adam, and also perceiving that the time fixed for taking testimony at Mr. Clemens's was a day subsequent to when the cause could be noticed for hearing, and that hence there would be abundant time if a cross-examination was deemed necessary, affiant concluded not to thus cross-examine said Adam, and accordingly wrote Mr. Foote a letter, a copy of which, marked "C," is hereto annexed.

That on the day fixed for taking testimony at Mr. Clemens's, affiant was ready and had made arrangements to go there, but on the morning of said day, to his great surprise, was informed by Mr. Foote that the testimony would not be taken; that in the opinion of affiant and the other counsel associated with him, it is material and important to the merits of this cause that the said Adam should be cross-examined; that it is also necessary and material to the merits that rebutting testimony be taken; that such testimony can be given by Charles G. Hammond and others; that this affiant is perfectly familiar with this cause and its merits, with the testimony which has been taken on either side, and that he has had the main charge thereof; and this affiant further says, that, had it not been for the service of said notice, a copy whereof is annexed, marked "B," he would have promptly taken steps and seen to it that said J. J. Adam was duly cross-examined, and rebutting and other testimony duly had; but that, receiving said notice, and perceiving thereby that testimony could not be closed in time to notice said cause for the present term of said court, under the rules of practice of the court, he was under no fear of losing time, or the opportunity for introducing said testimony and cross-examining said Adam.

(Signed) J. A. VAN DYKE.

Sworn and subscribed before me, this 23d May, 1854.

WM. GRAY,

Notary Public, Wayne County, Mich.

"A."

The Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY et al.

In this cause, neither party having claimed an intention of examining witnesses in open court, and more than ten days having elapsed since the filing of replications to the answers of the defendant, it is ordered, on motion of Higby & Foote, solicitors for the defendants, that the testimony of the witnesses in said cause be taken before a circuit court commissioner, within sixty days from the service of notice of this order on the solicitors for the complainant.

You will please take notice that an order, of which the foregoing is a true copy, has been ordered in the book of common orders, kept by the register of the above named court.

(Signed) HIGBY & FOOTE,
Sol'ts for Def'ts.

To VAN DYKE, FRAZER, EMMONS and GRAY,
Sol'ts for Compl't.

"B."

Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY et al.

You will please take notice, that we shall take the testimony of John J. Adam, on the part of the defendants, before Eugene Pringle, esq., circuit court commissioner for the county of Jackson, at his office in the village of Jackson, on Tuesday, the 9th day of May instant, at the hour of ten o'clock in the forenoon of said day; the examination of the said John J. Adam to proceed from day to day, as may suit the convenience of said commissioner.

You will also please take notice, that we shall take the testimony of A. C. Smith and Robert P. Eldridge, on the part of said defendants, before the circuit court commissioner for the county of Macomb, at the office of the said Robert P. Eldridge, at the village of Mount Clemens, on Thursday, the eleventh day of May instant, at the hour of two o'clock in the afternoon of said day, the examination of the said A. C. Smith and Robert P. Eldridge to be continued from day to day as may suit the convenience of said last-named commissioner. All said testimony to be used upon the hearing of said cause.

(Signed) HIGBY & FOOTE,
Solicitors for Defendants.

To Messrs. VAN DYKE, FRAZER, EMMONS, and GRAY,
Complainant's Solicitors.

"C."

DETROIT, *May* 8, 1854.

GEORGE FOOTE, Esq.

DEAR SIR: I am much obliged by yours of the 6th, which I received this morning. I perceive from it that you propose only to examine John J. Adam on some additional matter. I think, therefore, I will not go out to-morrow, as it seems scarcely worth while to do so at present, because, first, it is exceedingly doubtful if O. will care to take further testimony, or to cross-examine Adam at all. Second, when you get through with your witnesses, I can, in twenty-four hours afterwards, say if I wish to examine or cross-examine; and, if so, can do it all in a day or two. Please, therefore, to bring with you copy of examination you may take of Adam.

Have some clerk write it for me, and please pay him, and let me know the amount when you come in. If I desire to cross-examine Adam, we will fix some day this week for it when I see you.

I suppose you will come in on Thursday morning—perhaps on Wednesday. Let me see you as soon as you arrive, as I will have a buggy ready and drive you to Mt. Clemens.

Yours, truly,

(Signed) J. A. VAN DYKE.

We admit due service of the foregoing papers.

HIGBY & FOOTE,
Defendant's Solicitors.

On the said 16th June, 1854, an affidavit was filed with said register in the following words and figures, viz:

Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton, and Guy Foote.

STATE OF MICHIGAN,
County of Jackson, ss:

Guy Foote, of said county, being duly sworn, says: That he is one of the solicitors for the defendants above named; that on the tenth day of February last past, an order was entered in said cause for the taking of proofs therein, before a circuit court commissioner; and that, on the same day, notice of the entry of said order was served on William Gray, esq., one of complainant's solicitors, by deponent. And deponent further says, that after the entry of said order, deponent frequently

requested the said William Gray to take, at as early a day as possible, the proof in behalf of complainants, as the defendants would not probably take any other than rebutting testimony; that neither the said William Gray, or any other person on behalf of complainant, having, to the knowledge of deponent, made any effort to take testimony in their behalf, deponent, on the twenty-second day of March, 1854, addressed to said William Gray a letter, of which the following is a copy:

JACKSON, *March* 22, 1854.

WILLIAM GRAY, Esq.

DEAR SIR: As the time for taking testimony in the case of Michigan Central Railroad Company vs. Michigan Southern Railroad Company et al. has more than half expired, I wish to say to you, as I have heretofore stated in person, that I cannot consent to any extension of the sixty days allowed by the order heretofore entered for taking the testimony. I wish further to urge upon you the necessity of taking your testimony in behalf of complainants at as early a day as possible, for the reason that the defence may deem it necessary to take rebutting testimony, in which case they will not have sufficient time to do this within the sixty days, and for this purpose may be obliged to apply to the court for further time.

Very respectfully,

GUY FOOTE,

Of Counsel for Michigan Southern Railroad Company.

And that on the twenty-fifth of said March, deponent received a reply thereto, signed by said William Gray, of a portion of which the following is a copy:

DETROIT, *March* 23, 1854.

MY DEAR FOOTE: May you live a thousand years and preserve your good looks and amiable temper to the last.

I have just enjoyed the delicious treat of reading yours of the 22d, and am at a loss which to admire most, the firm stand you have taken, or the delicate touches by which you intimate that we need expect no quarter. Write me just such a letter twice a week—oftener, if convenient. How the deuce do you suppose I could be disposed to hurry up that case, when its final disposition terminates our correspondence. Nothing but a sense of duty could lead me to an act personally so distasteful. Duty, however, has whipped in the same direction in which you speed, and I have been doing all possible to get the witnesses here together, so we might annihilate you in one day and not give you a second journey here. I hope to have them next week early, and will notify you of names, time, and place.

Yours, sine die,

(Signed) WM. GRAY.

That on the 28th day of said March, deponent received from said Gray by mail a letter, of which the following is a copy:

DETROIT, *March* 27, 1854.

DEAR FOOTE: You will hereby take notice that we will examine our witnesses in the railroad case before A. Mandell, in this city, on Saturday, the 1st April, commencing at 10 o'clock a. m.

Please notify us, by return mail, if that day will suit you, or otherwise we will try to change it; we expect to get through with all our testimony in one day. Yours, truly,

WILCOX & GRAY.

And deponent further says, that the notice contained in the last mentioned letter being informal, and not mentioning the names of witnesses, deponent requested said Gray to give him the names of his witnesses; and, thereupon, on the 29th day of said March, deponent received from said Gray, by mail, a letter, of which the following is a copy:

DR. FOOTE: As far as I can learn, the witnesses we will examine will be George Davis, R. N. Rice, E. Noyes, J. W. Smith, C. C. Trowbridge, and George E. Hand.

God bless you, as ever, yours,

W. GRAY.

And deponent says, that he, being in Detroit on the 31st day of March aforesaid, called on the counsel for said complainant, and obtained their consent to commence the taking of the testimony on that day; whereupon a number of witnesses were examined on that and the succeeding day, on behalf of complainant. Fifty out of the sixty days allowed by the aforementioned order having at this time expired, and no testimony having before this time been taken, by or on behalf of said complainant in said cause; and deponent says, that at the close of the examination of witnesses on the said first day of April, the further examination of witnesses in behalf of complainant was postponed, at the request of complainants' counsel, until the sixth day of April, at the same place; that on the sixth day of April deponent attended at the time and place to which the said examination was adjourned, and was there informed by James A. Van Dyke, esq., of counsel for said complainant, that he had not succeeded in getting his witnesses, but that on the 12th of April he would be ready to proceed with and close the examination of his witnesses; the said examination was therefore postponed until the 12th of April the instant. On the 12th of April, therefore, at the time and place to which said examination had been again postponed, deponent again appeared, and was again informed by said Van Dyke that he had not succeeded in obtaining the presence of his witnesses, but would do so soon, and would then inform deponent; that deponent then said to Mr. Van Dyke that he could be ready, as he had always been, and as he had before stated, to attend to the examination of complainants' witnesses on one day's notice; that he (deponent) had requested the attendance of John J. Adam at Jackson, on the following day, (April 13th,) and wished, at that time and place,

to examine him as a witness on behalf of defendants; that, on repeating this request to said Gray, he stipulated verbally with deponent that he, deponent, might go and take the testimony of said Adam ex parte, on said 13th day of April, at said Jackson, with the privilege to said complainants' counsel to cross-examine him at a future day, in case they should wish so to do. That on said 13th day of April, at said Jackson, this deponent, confiding in the verbal stipulation so made to him by said Gray as aforesaid, did take the testimony of said Adam ex parte, before the circuit court commissioner for the county of Jackson, and, as deponent verily believes, in accordance with the rules and practice of this court; and deponent says, that on the 17th day of said April deponent received from said Gray, by mail, a letter, of which the following is a copy:

DETROIT, *April* 16, 1854.

DEAR FOOTE: The witnesses in the railroad case will be all here and examined on the morning of the 19th, Wednesday. Please be sure to be here, and then we can submit the case on Thursday, and have it up and finished next term of supreme court. Try and send us in Adam's test. by return mail, so we may see if we want to cross-examine him. If you send the original we will be answerable to deliver it to you safe, on your arrival here.

Yours, truly,

WILCOX & GRAY.

And that by the return mail, from Jackson to Detroit, deponent sent a copy of the testimony of John J. Adams to said Gray, and that, on the 19th day of said April, deponent attended at Detroit to the examination of the witnesses on the part of complainant, as deponent was advised by said last mentioned letter would take place on that day; that on that day deponent was informed by said Van Dyke that he intended to cross examine said John J. Adams, and that he could not allow his testimony to be read in the cause, until he (said Van Dyke) had had an opportunity of cross-examining him. And deponent says, that on said 19th day of April, and after the testimony which was taken on that day in behalf of complainant had been concluded, deponent requested to know of said William Gray whether he intended to take any further testimony on behalf of complainants, to which he (said Gray) replied that he could not then tell, but that he would write deponent the next day and inform him; that not receiving any letter from said Gray, deponent, on the 22d day of April, wrote to said Gray a letter, of which the following is a copy:

WILLIAM GRAY, Esqr., *Detroit.*

MY DEAR SIR: We shall take the testimony of two or three witnesses, before our circuit court commissioner, on Thursday next, closing the proofs on our side on that day. Do you want J. J. Adam to be present on that day? if so, please inform us. How can I express

to you my gratification at your promptness in writing me on Thursday, (as you promised,) to inform me whether you intended to take any further testimony, and also on what day you had fixed with Judge Douglass to hold his court during the coming week.

Very truly, GUY FOOTE.

And that on the 25th day of April deponent received a letter from said Gray, of which the following is a copy:

DETROIT, *April* 24, 1854.

DR. FOOTE: Some of us will be out by the morning train of Thursday to take said depositions. You need not mind Adams at present. I did write as I promised, but after getting yours, found on search that the letter had been put in some papers and did not go. Please exert your usual kindness and excuse me. The court adjourned to Thursday, but we will have to get the court to continue to some other day. With unabated affection and admiration,

Yours, ever, GRAY.

And deponent says, that he not hearing from said Gray as soon as he expected, had sent for said John J. Adams to be present and submit to a cross-examination, at Jackson, on the 27th day of April, at the time of the proposed examination of Oliver C. Comstock, jr., and Frederick Hubbard, as witnesses on behalf of defendant. And deponent says, that on the said 27th day of April, Geo. V. N. Lothrop, esq., appeared before the circuit court commissioner in behalf of complainant, and after the examination of Oliver C. Comstock, jr., was concluded, deponent requested said Lothrop to remain, and then and there cross-examine said John J. Adams, to which said Lothrop refused to consent, saying that he knew nothing about the matter. And deponent further says, that on the 28th day of said April the testimony of Frederick Hubbard was taken in the city of Detroit, on behalf of defendants.

That after the taking the said testimony, deponent stated to said Van Dyke that he, deponent, thought that he should not take any further testimony in behalf of defendants, and at the time inquired of said Van Dyke if he (Van Dyke) intended to take any further testimony for complainant, or intended to cross-examine John J. Adams; to which said Van Dyke replied, that he could not then tell deponent; that he would consult with his associate counsel, and would then write deponent, at Jackson, on Tuesday, the 2d day of May instant, and inform him of their determination in the premises.

And deponent says, that on the third day of May instant, deponent received by mail from Detroit a letter from said Van Dyke, of which the following is a copy:

DETROIT, *May* 2, 1854.

G. FOOTE, Esq.

DR. SIR: I was compelled to be absent all day yesterday, and could not have the interview with Mr. Fraser, &c., as I had hoped. If an

examination in which Lothrop, Fraser, Gray, and myself, are all concerned, on separate sides, does not come off to-morrow, we will meet and see as to our railroad suit; if not, we will meet the very first we can, and I will then inform and further advise you fully.

Yours, truly,

J. A. VAN DYKE.

And deponent says, that thereupon, not obtaining any satisfactory answer, and feeling anxious to retain the testimony of John J. Adams, (deponent having no evidence that the previous testimony of said Adams was taken regularly, so as to entitle it to be read in evidence,) deponent gave a written notice to the solicitors for the complainant of his intention to take the testimony of said Adam before the circuit court commissioner for the county of Jackson, at his office, in the village of Jackson, on the 9th day of May instant, at 10 o'clock in the forenoon, *of* hoping thereby to compel them to cross-examine said Adam at that time, if they intended so to do at all. Deponent further gave notice in said written notice that he intended to take the testimony of Robert P. Eldridge and A. C. Smith, at Mount Clemens, on the eleventh day of May, 1854, at 2 o'clock in the afternoon of said day, saying at the time of the handing of the written notice to said Gray, that he, deponent, would not take any further testimony in said cause on behalf of defendants, if thereby deponent should be prevented from bringing on said cause to a hearing at the then coming term of this court. And deponent further says, that on the sixth day of May instant, deponent received from said Van Dyke a letter, of which the following is a copy:

DETROIT, *May 5th*, 1854.

"G. FOOTE.

DR. SIR: Will you be kind enough to advise me by return mail how long you think it will take to get through the testimony you propose taking, at Jackson, on 9th. My reason for troubling you with the inquiry is this: I wrote you before that there was an examination under false imprisonment act going on here, in which Lothrop and Fraser are on one side, and Gray and myself on the other. It seems to be interminable, and I have to go to Jackson. I want to have the examination here continued to some given day.

Please therefore to oblige me by reply.

Yours, truly,

J. A. VAN DYKE."

And that on the said day with the receipt thereof, deponent wrote to said Van Dyke by mail a letter, of which the following is a copy:

JACKSON, *May 6th*, 1854.

J. A. VAN DYKE, Esq., *Detroit*.

MY DEAR SIR: The examination of Jno. J. Adam will not take over fifteen minutes on the part of the def'ts.

Very truly, GUY FOOTE.

And that on said ninth day of May, said John J. Adam and deponent appeared before the circuit court commissioner at the time and place appointed in said notice, but that no one appeared in behalf of complainants; that thereupon, and with a view of giving complainants' counsel an opportunity to cross-examine said Adam, deponent caused his examination to be continued until after arrival of morning train of cars from Detroit on that day; that after the arrival of the train of cars from Detroit, deponent received from said Van Dyke a letter, of which the following is a copy:

DETROIT, *May* 8, 1854.

GUY FOOTE, Esq.

DEAR SIR: I am much obliged by yours of the 6th instant, which I received this morning. I perceive from it that you propose only to examine John J. Adam on some additional matter. I think, therefore, that I will not go out to-morrow, as it seems scarcely worth while to do so at present; because, first, it is extremely doubtful if I will care to take further testimony, or to cross-examine Adam at all; 2d, when you get thro' with your witnesses, I can, in 24 hours afterwards, say if I do wish to examine or cross-examine; and if so, can do it all in a day or two.

Please, therefore, to bring with you a copy of examination you may take of Adam. Have some clerk write it for me and please pay him, and let me know the amount when you come in. If I desire to cross-examine Adam we will fix some day this week for it, when I see you. I suppose you will come in on Thursday morning, perhaps, or Wednesday evening. Let me see you as soon as you arrive, as I will have a buggy ready and drive you to M't Clemens.

Yours, truly,

J. A. VAN DYKE.

That thereupon deponent proceeded with the taking the testimony of said John John J. Adam, which has been duly returned and filed with the register of this court; that on the 10th day of May, A. D. 1854, deponent met said Van Dyke in the city of Detroit, and that deponent then informed said Van Dyke that he should require, before he took any further testimony, from complainants' solicitors a stipulation to go to a hearing at the present term of this court; that on the morning of the next day deponent met said Van Dyke, and presented to him to sign a stipulation, of which the following is a copy:

Circuit Court for the county of Wayne—In Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY and others.

In this cause it is hereby stipulated by the parties, by their respective solicitors, that the proofs shall be peremptorily closed therein on and

after the twenty-third day of May instant, on which day, or at any time thereafter, either party may enter an order closing proofs, and may bring said cause on to a hearing at any time during the next term of this court, on giving two days' notice thereof to the opposite party.

Dated Detroit, May 10th, 1854.

That thereupon the said Van Dyke, to the great surprise of deponent, refused to sign said stipulation, and said that he had no objections to having the proofs closed at the time mentioned therein, but would not consent to go to a hearing as therein stipulated, alleging as a reason, among others, that he did not want to be compelled to go to a hearing in the supreme court at Adrian or Pontiac, unless there was a full attendance of the judges of the supreme court. Deponent, after some further conversation with said Van Dyke, stated to him that he should not take any testimony at Mt. Clemens, or elsewhere, in said cause, but that he should enter an order closing proofs on that day, and also take the necessary steps to bring in said cause to a hearing at the then next term of this court.

(Signed) GUY FOOTE.

Sworn and subscribed before me this 30th day of May, A. D. 1854.

J. HOWE,
Notary Public, Jackson co., Mich.

Afterwards, on the said sixteenth day of June, eighteen hundred and fifty-four, an entry was made in the journal or record of said court by the register thereof, of which the following is a true copy, viz:

At a session of the circuit court for the county of Wayne, in chancery, held at the court-house in the city of Detroit, on the sixteenth day of June, in the year of our Lord one thousand eight hundred and fifty-four—Hon. Samuel T. Douglass, circuit judge.

THE MICHIGAN CENTRAL RAILROAD COMPANY, complainants,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, and others, defendants.

The motion of complainants to strike this cause from the docket for the present term of this court is agreed by solicitors for respective parties; and the court having duly considered said argument, and also the affidavits filed by respective parties on this motion, orders that said motion be denied.

Entered by E. HAWLEY, JR., *Register*.

And afterwards, to wit, on the said sixteenth day of June, one thousand eight hundred and fifty-four, an entry was made in the journal or rule of said court by the register thereof, of which the following is a true copy, viz:

At a session of the circuit court for the county of Wayne, in chancery, held at the court-house, in the city of Detroit, on the sixteenth day of June, in the year of our Lord one thousand eight hundred and fifty-four. Present, Hon. Sam'l T. Douglass, circuit judge.

THE MICHIGAN CENTRAL RAILROAD COMPANY, complainants,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis and others, defendants.

The motion of defendants in this cause for an order to modify the writ of injunction heretofore issued in this cause, so that the defendants can proceed to construct the railroad mentioned in the pleadings in this cause, provided they shall undertake not to operate said road within the distance enjoined, until the final determination of said cause by this court, or for such other or further order as said court may deem proper to grant, is agreed by the solicitors for respective parties, and the same having been duly considered by the court, is by the court denied.

Entered by

E. HAWLEY, JR., *Register*.

And afterwards, to wit, on the seventeenth day of June, A. D. 1854, at Detroit, before said court, said cause came on to be heard, was agreed by counsel, considered by the court, and decree passed by said court, which decree is in the words following, to wit:

STATE OF MICHIGAN,
Wayne county, ss:

The Circuit Court for the county of Wayne, in Chancery.

At a session of said court, held at the city of Detroit, in said county, on the 17th day of June, in the year one thousand eight hundred and fifty-four. Present, S. T. Douglass, circuit judge.

In the case between—

THE MICHIGAN CENTRAL RAILROAD COMPANY, complainants,
and
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton, and Guy Foote, defendants.

This cause coming on to be heard upon the pleadings filed and the proofs taken therein, and the proofs having been read, and Messrs. Fraser, Van Dyke and Gray, of counsel for complainants, and Mr.

Foote, of counsel for defendants, having been heard, and the court having duly considered said pleadings, proofs, and argument, and it satisfactorily appearing to the court, as well from said pleadings as from said proofs, that the complainants are a body corporate, duly organized under "An act to provide for the sale of the Michigan Central Railroad and to incorporate the Michigan Central Railroad Company," approved 28th, 1846, with the provisions of which they have fully complied, and, as such, own the Michigan Central Railroad, which extends from Detroit westwardly through the village of Jackson to New Buffalo, and from thence southwardly across the southern boundary of the State; and are, by a provision of the 5th section of their charter, vested with the franchise or privilege not to have any railroad or railroads from the eastern or southern boundary of the State built, constructed, or maintained, or authorized to be built, constructed, or maintained by or under any law of this State which shall approach westwardly of Wayne county, within five miles of the line of said Michigan Central Railroad, without their consent.

And it further appearing that the defendants—the Michigan Southern Railroad Company—are a body politic and corporate, duly organized under "An act to authorize the sale of the *sale of the* Michigan Southern Railroad and to incorporate the Michigan Southern Railroad Company," with the provisions of which they have fully complied, and, as such, own the Michigan Southern Railroad, which extends from Monroe westwardly through the village of Adrian to and across the southern boundary of the State near White Pigeon; and also a certain other railroad known as the Tecumseh Branch of the said Michigan Southern Railroad, extending from a point on said Southern Railroad about five miles east of Adrian northwardly to the village of Tecumseh, and control and use in connection with said Southern road, the Erie and Kalamazoo Railroad, which extends from Toledo, in Ohio, northwardly across the southern boundary of the State to Adrian.

And whereas the said defendants are not authorized by the terms of their charter to construct or extend the said Tecumseh Branch from Tecumseh northwardly on the line therein designated beyond a point on said line, which is five miles distant from the Michigan Central Railroad, without the consent of the complainant:

And whereas, also, the said Tecumseh Branch, five miles of the said Southern Railroad, east of Adrian and the said Erie and Kalamazoo Railroad together, constitute railroads from the southern, and the said Tecumseh Branch and the eastern portion of the Southern Railroad together, constitute railroads from the eastern boundary of the State, within the true intent and meaning of the said provision of the 5th section of the charter of the complainants; and the extension of the said Tecumseh Branch by the defendants from Tecumseh northwardly towards Jackson, beyond a point where the line of said road would approach within five miles of the line of the Michigan Central Railroad, without the consent of the complainant, would be a violation of the before-mentioned franchise or privilege of the complainants:

And whereas it appears that the complainants do not consent to such extension, and it further appearing satisfactorily to the court that the defendants in this bill named have threatened to build, construct, complete, and operate the said Tecumseh Branch Railroad from Tecumseh northwardly to the village of Jackson, and have already constructed and completed a portion of said branch, and are continuing to construct and complete the residue thereof; that they have procured subscriptions to their stock for that purpose; have surveyed, located, and let contracts for grading the entire of said branch from Tecumseh to Jackson, and avow their intention to construct and complete the same for the whole distance from Tecumseh, as speedily as may be practicable:

Therefore, in consideration of the premises, and on motion of said counsel for the complainants, this court doth hereby order, adjudge, and decree, that the said defendants—The Michigan Southern Railroad Company, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Guy Foote, Amos Root, Moses A. McNaughton—and each and every of them and their and each of their agents, solicitors, workmen, laborers, contractors, sub-contractors, servants and confederates, and any thereof, be, and they are hereby, perpetually and absolutely enjoined, inhibited, and restrained from making, constructing, building, maintaining, or operating any and every part, parcel, and portion of the said contemplated and threatened railroad from said Tecumseh to said Jackson, or any other road in continuation of the said Tecumseh Branch road in said pleadings mentioned, which shall or would, when completed, run or approach westwardly of Wayne county, within five miles of the said Michigan Central Railroad of said complainant, and from taking any steps or doing any act or thing towards the completing, building, maintaining, or operating any such portion of such railroad under any pretence or authority soever.

And, on like motion, it is further ordered, adjudged, and decreed, that the said complainants recover of said defendants the costs and charges in this belief to be taxed.

(Signed) SAM'L T. DOUGLASS,
Circuit Judge.

And afterwards, to wit, on the twenty-third day of June, in the year one thousand eight hundred and fifty-four, a claim of appeal was filed in the office of the register of said court, which claim of appeal is in the following words and figures, viz:

Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, John B. Jervis, Elisha C. Litchfield, Thomas G. Davis, Amos Root, Moses A. McNaughton, and Guy Foote.

The defendants hereby claim an appeal from the decree of the said

circuit court for the county of Wayne, in chancery, made in the above-entitled cause, on this seventeenth day of June, A. D. 1854.

Dated Detroit, June 17th, 1854.

HIGBY & FOOTE,
Sol'ts for Defendants.

And on the same day, to wit, on the twenty-third day of June, A. D. 1854, the said defendants filed in the office of the register of said court a bond to appear, which bond is in the words and figures following, to wit:

Know all men by these presents, that we, Guy Foote, Elisha C. Litchfield, Henry H. Brown, and R. M. Cheaney, all of the State of Michigan, are held and firmly bound unto the Michigan Central Railroad Company, a company incorporated by the laws of the said State of Michigan, in the sum of one thousand dollars, to be paid to the said Michigan Central Railroad Company, or its assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, forever and firmly by these presents; sealed with our seals, dated this seventeenth day of June, in the year of our Lord one thousand eight hundred and fifty-four.

Whereas the Michigan Southern Railroad Company, John B. Jervis, Thomas G. Davis, Amos Root, Moses A. McNaughton, and the said Elisha C. Litchfield and Guy Foote have appealed to the supreme court of the said State of Michigan from a decree of the circuit court for the county of Wayne, (in said State,) in chancery, made on the seventeenth day of June, A. D. 1854, in a cause in which the said Michigan Central Railroad Company was complainant, and the said Michigan Southern Railroad Company, John B. Jervis, Thomas G. Davis, Amos Root, Moses A. McNaughton, Elisha C. Litchfield, and Guy Foote, were defendants:

Now, therefore, the condition of this obligation is such, that if the said appellants shall perform the decree or final order of the said supreme court, and pay all costs which may be awarded against the said appellants, in case the decree of the said circuit court for the county of Wayne, in chancery, shall be affirmed, then this obligation to be void, otherwise to remain in full force and virtue.

GUY FOOTE, [L. S.]
ELISHA C. LITCHFIELD, [L. S.]
H. H. BROWN, [L. S.]
R. M. CHESNEY, [L. S.]

Sealed and delivered in presence of—

I approve of the form and execution of the within bond, and of the sufficiency of the sureties therein.

Dated Detroit, June 17th, 1854.

WM. T. YOUNG,
Circuit Court Commissioner,
Wayne county, Michigan.

STATE OF MICHIGAN,
county of Wayne, ss:

I, Elijah Hawley, jr., register of the circuit court for the county of Wayne, in chancery, do hereby certify that the foregoing contains true and correct copies of the bill, and all other pleadings, papers, and proceedings filed or entered in the foregoing entitled cause; and I further certify that the same has been carefully compared by me with the originals on file in my office, and that the same are correct copies of such originals, and of the whole thereof.

In testimony whereof I have hereunto set my hand, and have hereto affixed the seal of said court at Detroit, this 30th day of June, A. D. 1854.

E. HAWLEY, JR.,
Register.

And afterwards, to wit, on the second day of September, A. D. 1856, at a session of the supreme court of the State of Michigan, held at the city of Adrian on said day—present the Hon. David Johnson, Nathaniel Bacon, George Martin, and Joseph T. Copeland, judges—the following decree made by said court, in above-entitled cause, was entered in the journal of the proceedings of said court in the words following, viz:

On appeal from the Circuit Court for the county of Wayne, in Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY, compl'ts,
vs.
THE MICHIGAN SOUTHERN RAILROAD COMPANY, def'ts.

This cause having been heard at the last January term of this court, and due deliberation having been had thereon, it is ordered that the decree of the court below be reversed, and that the bill of complaint be dismissed, and that the defendants recover against the complainants their costs of suit to be taxed, and that they have execution therefor; and that the cause be remitted to the court below for such further proceedings as may be necessary to carry this decree into effect.

STATE OF MICHIGAN, *ss:*

I, E. Hawley, jr., clerk of the supreme court of the State of Michigan, do hereby certify that the foregoing is a true copy of the transcript (of the bill, other pleadings, papers, and proceedings filed and had in said cause in the circuit court for the county of Wayne, State of Michigan) filed in the said supreme court; also of the decree of the said supreme court rendered by said court, and entered in the journal of their proceedings in said cause; that the same has been compared by me with the originals thereof, and that the same are correct copies of the whole of said transcript and decree, as appears of record in my office.

And I further certify, that the foregoing bond and citation are the identical bond and citation filed with me as clerk; and further, that the names of Abner Pratt, signed to said bond and citation, are true and genuine, as I verily believe; that I am aequainted with the handwriting of said Abner Pratt, and further, that said Abner Pratt was at the date of said bond and citation the presiding judge of the supreme court of the State of Michigan.

In testimony whereof I have hereunto set my hand, and have hereto affixed the seal of said supreme court at the city of Detroit, this [SEAL.] 24th day of Nov., A. D. 1856.

E. HAWLEY, JR.,
Clerk.

3305

SUPREME COURT OF THE UNITED STATES.

No. 206.

THE OWNERS AND CLAIMANTS OF THE STEAMER VIRGINIA, APP'TS,

vs.

MITCHELL W. WEST AND OTHERS.

APPEAL FROM THE CIRCUIT COURT OF THE U. S. FOR THE DISTRICT OF MARYLAND.

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THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-five:—Present, the honorable R. B. Taney, chief justice of the Supreme Court of the United States; Wm. F. Giles, judge of Maryland district; Wm. M. Addison, esquire, attorney; John W. Watkins, esquire, marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

THE OWNERS AND CLAIMANTS OF THE STEAMBOAT VIRGINIA, appellants,
vs.
MITCHELL W. WEST AND OTHERS, appellees.
} Record filed 4 April, 1855.

Be it remembered, that heretofore, to wit, on the fourth day of April, in the year of our Lord one thousand eight hundred and fifty-five, the said Owners and Claimants of the Steamboat Virginia, by S. T. Wallis and William Schley, esquires, their proctors, filed in the circuit court the transcript of a record from the district court of the United States, in and for the Maryland district, in the words and of the tenor following, to wit:

Record from the District Court.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a district court of the United States, in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in March, in the year of our Lord one thousand eight hundred and fifty-five:—Present, the honorable William F. Giles, judge of Maryland district; Wm. M. Addison, esquire, attorney; John W. Watkins, esquire, marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

MICHELL W. WEST AND OTHERS
vs.
THE STEAMBOAT VIRGINIA.
} Libel filed 3d November, 1854.

To the honorable William F. Giles, judge of the District Court of the United States, in and for the Maryland district.

The libel of Mitchell W. West, William T. Bell, Albert R. Heath, and James J. Edwards, partners, under the firm of Heath and Edwards; Thomas C. Bunting and Lecato, partners, under the

firm of Bunting and Lecato, all of Accomac county, in the State of Virginia, and John M. Henderson, of Northampton county, in said State of Virginia, respectfully shows, alleges, and propounds:

1. That your libellants were respectively shippers for themselves, individually, and for their partnerships aforesaid, and in their said individual or partnership rights, owners of various parcels of goods, merchandise, and chattels, on board of the schooner Lovy Harrison, of Accomac county aforesaid, which, laden with said *perty*, sailed from the port of Baltimore for Pongoteague creek, Accomac county, on the 16th day of October, in the year 1854.

2. That said schooner was proceeding on her said voyage down the Chesapeake bay, reaching a point off Sharp's Island, with a very light breeze from the west, and the schooner under full sail steering south, and about or between the hours of 2 and 3 o'clock in the morning, it being bright moonlight, and the schooner having lights forward, was easily discernible at a distance of more than a mile.

3. That at that time, and from that position, a steamer (on being seen, discovered at once to be a steamer) was descried from the schooner, on the schooner's starboard bow, and approaching the schooner upon a course the opposite to that steering by the schooner; and that said steamer was seen as aforesaid more than five minutes before she encountered as hereinafter mentioned the said schooner, and was then, and up to the time of the collision hereinafter mentioned, moving at a moderate rate.

4. That instantly upon seeing the steamer, the captain of said schooner, with loud and audible cries, called on said steamer and desired her to keep clear of the said schooner, which she had time and space enough to do, and might with great ease and safety have done, but which she refused or neglected to do, although she was on the channel side, and had the amplest space at her pleasure; while in that respect, the schooner was limited in her room for her course.

5. That the said schooner held her course, and the said steamer also held her course; and when said steamer was within about fifty yards of the schooner, the captain of the schooner, seeing that the steamer would inevitably run into said schooner, changed the course of said schooner more to the eastward, so as to make the greatest possible space between her and said steamboat, and to ensure their safely passing each other; and supposing that the steamer, as she ought to have done, would have turned her course further westward; but that the steamer also changed her course to the eastward, although she was on the channel side as aforesaid.

6. That in consequence of said steamer thus improperly and negligently adopting such a course, she ran into the schooner, striking into the schooner's starboard bow about four feet abaft her stem, cutting off the bow of said schooner, and carrying away her anchors, chains, foremast, and all her sails except the mainsail; and thereby, and by the fault and wrong of said steamer, sinking the said schooner and her cargo, comprehending all the property aforesaid of your libellants, so

as aforesaid shipped on board of said schooner, and at once producing a total loss of said schooner and cargo, and within this court's jurisdiction.

7. That said steamer was the Virginia, of the port of Baltimore, commanded by Captain Noah Fairbanks.

8. That the costs to your libellants of their respective parcels of merchandise and commodities, so shipped by them aforesaid, (that cost being less than the value to said owners of said property,) is particularized in a schedule hereto annexed, marked A, which they offer and pray may be taken as part of this libel, the aggregate of said cost being, it will appear, to some $5,017 56.

9. That no satisfaction to any extent has been made to your libellants on part of the owners of, or of any others connected with, said steamer for the losses of your libellants thus occasioned to them by the wrong of those in charge of said steamer, wherefore your libellants have to seek, and do now pray redress and compensation from your honorable court, and a decree for their payment respectively of their several amounts of loss by said wrongful destruction of their property, to the extent of said cost, and such further amount for the full damages of your libellants as they may show equitable, to be adjudged in their behalf; and to that end, that the said Steamer Virginia now in the port of Baltimore, within the Maryland district, her tackle, apparel, and furniture may be condemned, and decreed to be sold, and that from the proceeds of sales, satisfaction may, as prayed, be made under the judgment and order of this honorable court; and therefore, and in that behalf, these libellants pray process of this honorable court of attachment against said Steamer Virginia, her tackle, apparel and furniture, to answer as aforesaid to your libellants, to wit, in a sum in all amounting to at least $5,017 56, and for their several proportions of said total sum; and they also pray citation and monition to said Captain Noah Fairbanks, that he may answer the premises.

ST. GEO. W. TEACKLE,
Proctor for Libellants.

Exhibit A.

Schedule referred to in the annexed libel, showing the cost of the respective parcels of property belonging to the libellants, respectively.

Mitchell W. West - - - - - - - - -	$4,817 10
William T. Bell - - - - - - - - -	68 97
Heath & Edwards - - - - - - - -	35 80
Bunting & Lecato - - - - - - - -	70 69
John M. Henderson - - - - - - - -	25 00
	$5,017 56

Amended Libel.

The amended libel of Mitchell W. West against the Steamboat Virginia, respectfully alleges and propounds as follows:

9. That by reason of the destruction and loss of libellants' property and goods by the collision alleged and set forth in the original libel filed in this case, and in consequence of said destruction and loss, your libellant was greatly damaged by loss of profit on his goods, by loss of time in not having his goods for sale at the proper period, and this libellant being compelled to devote a large portion of his time in the purchase of a new stock of goods, and in being postponed to a later market for the purchase of such new stock; such damages amounting, as he alleges, to the sum of one thousand dollars, in addition to the amount stated in said libel.

10. That the matters and things charged and alleged in his said original libel, and in this his amended libel, are true, and are within the jurisdiction of this court.

ST. GEO. W. TEACKLE,
Proctor for Libellant.

Claim.

In the District Court of the United States for the district of Maryland.

MITCHELL W. WEST and others
vs.
STEAMER VIRGINIA, her tackle, &c. } In Admiralty.

To the honorable William F. Giles, judge of the district court of the United States for the district of Maryland.

The undersigned, Noah Fairbanks, master of the said Steamer Virginia, respectfully represents: That said steamboat, her tackle, &c., have been arrested at the port of Baltimore, being at the time of such arrest in the possession of the undersigned, as master as aforesaid, and that he, the undersigned, is the lawful bailee thereof for the owners. That "the Old Dominion Steamboat Company," a corporation created by the State of Virginia, is the true and only owner of said steamboat, her tackle, &c., and that the said corporation, its president, and other officers belong to the State of Virginia, and are not present to interpose a claim in this behalf; that said steamboat belongs to the port of Tappahannock, in Virginia, and is engaged in the business of transportation of passengers and merchandise to and from Fredericksburg and Baltimore; and that the detention of said vessel under said arrest will be attended with inconvenience to the public and loss to the owners; and that sufficient persons are ready to enter into stipulation, with sureties, in such sum as your honorable court may direct for the payment of all costs and expenses which shall be awarded against said claimant by the final decree of the court, or on appeal by the appellate court. Wherefore the undersigned, master as aforesaid, on behalf of said claimant, prays that said claimant may be admitted to defend said libel; and that the said steamboat, her tackle, &c., may be re-

leased from said arrest, on the giving of such stipulation as may be required by this honorable court. NOAH FAIRBANKS.

Subscribed and sworn to this 9th November, 1854, before me.

JOHN HANAN,
U. S. Com'r for Md.

Let a stipulation be taken in the penalty of ten thousand dollars.

WILLIAM F. GILES.

Stipulation.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Be it remembered, that on this ninth day of November, in the year of our Lord one thousand eight hundred and fifty-four, before me, John Hanan, a commissioner appointed by the circuit court of the United States for the fourth circuit in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," appears John R. Gwym, and Richard J. Capron, and John J. Husband, of the district aforesaid, in their own proper persons, and submit themselves to the jurisdiction of the district court of the United States in and for the Maryland district, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators, to be bound in the sum of ten thousand dollars, for the claimants of the Steamer Virginia, to Mitchell W. West, William T. Bell, Albert R. Heath, James J. Edwards, Thomas C. Bunting, Lecato, and John M. Henderson, to perform and fulfil the final order and decree of the said district court; and in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit in and for the Maryland district; and in case of an appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Court of the United States, in a certain cause now depending in the said district court, wherein the said Mitchell W. West and others are libellants, and the claimants of the Steamer Virginia are respondents; and unless they so do, they severally consent that execution shall issue against them, their heirs, executors, and administrators, their goods and chattels, lands and tenements, wheresoever found or to be found.

Acknowledged before

JOHN HANAN,
U. S. Com. for Md.

Agreement.

In the District Court of the United States for the district of Maryland.

WEST
vs.
STEAMER VIRGINIA, &c.

It is agreed in this case that a commission shall be issued to Lewis

Finney, esquire, of Accomac county, Virginia, to take testimony to be used upon the trial of this cause upon behalf of libellants and claimant.

ST. G. W. TEACKLE,
Proctor for Libell'ts,

WILLIAM SCHLEY,
For Defend'ts.

Answer.

To the honorable William F. Giles, Judge of the District Court of the United States in and for the district of Maryland.

The answer of the Old Dominion Steamboat Company, owner of the steamer Virginia, and of Noah Fairbanks, her master, to the libel of Mitchell W. West, William T. Bell, and others, heretofore filed in this honorable court against the steamer aforesaid and her said master, in a cause of collision civil and maritime.

These respondents, by way of such answer, allege, and articulately propound, as follows:

1. That the said Old Dominion Steamboat Company is the owner of said steamer Virginia, true and bona fide, and that no other person is the owner thereof.

2. That the said Noah Fairbanks was the master of said steamer at the time of the collision in said libel mentioned, and still is.

3. That these respondents do not know, and cannot admit, that there was any cargo on board the said schooner Lovy Harrison at the time of said collision, or if there was, that it was of the value alleged in said libel, or that the libellants were the owners thereof, or entitled to sue for the same, so that they leave the libellants to their proof of said facts, if any they have.

4. That the said collision did in fact take place off the mouth of the great Choptank river, on Chesapeake bay, at about the time mentioned in said libel, the said steamboat being then in the prosecution of her usual voyage from Fredericksburg, in the State of Virginia, steering on her usual and proper course, with her proper lights set and lighted as by law required, and bound to the city of Baltimore.

5. That by the said collision the said steamer was greatly and seriously damaged, and was compelled to make considerable outlay for repairs after she arrived at her port of destination, from which she was detained some twelve or fifteen hours by reason of her leaky and damaged condition in consequence of the said collision.

6. That the said collision was the result of the default, neglect, and bad seamanship of the master and crew of said schooner Lovy Harrison, and is in no wise to be attributed to any misconduct, negligence, or want of proper and prudent precaution on the part of the master and crew of said steamer, which had on board competent and skilful pilots, a proper look-out, and all proper and lawful appliances for safe navigation.

7. That the wind was not light at and before the time of said collision, as the said libel falsely alleges, but, on the contrary, a strong wholesail breeze from the west was blowing, and gave to the said schooner as full control of her movements as that *possed* by the steamer, and as much power to avoid or prevent collision with other vessels. Neither had, as the libel improperly sets forth and pretends, any advantage of the channel or of steerage room, the schooner being in fact on the channel side, and there being ample room on both sides for all the purposes of free and safe navigation.

8. That the proper course of the schooner was south, and that of the steamer north; and as the steamer kept on her course, as the said confesses, it is manifest that no collision could have taken place, had the schooner kept on hers; that, instead of so keeping on her course, the said schooner, when very near the steamer, and about to pass her safely, altered her course so as to bring herself directly across the bow of the steamer; and although the steamer did on the moment attempt to alter her course to the east of north so as to escape the schooner, which was so bearing down on her, the vessels were too near for the said collision to be possibly avoided, and it took place as aforesaid.

9. That, as the two vessels approached each other, and before the alteration of the schooner's course, the steamer's course was to the east, and not to the west of the schooner's course, as the libel untruly states, and this will be apparent to the court from the statements of the libel itself; because, if the schooner was already to the east of the steamer, running on a parallel line to the steamer's course, and only altered her course so as to keep away further to the eastward, it is obvious that they could never have met, and could least of all met in the position admitted in the libel: that is to say, the schooner crossing the steamer's bow from west to east, and receiving the blow of the steamer, in so passing, but a few feet abaft the stem.

10. That said schooner carried no lights which were visible from on board said steamer, and was not seen until too late to avoid the collision which her own change of course rendered inevitable.

11. That, with the wind blowing as it was before and at the time of the collision, if the master and crew of the schooner saw the lights of the steamer five minutes before the collision took place, as they well might have done, the same being bright and conspicuous, there can be no excuse for their running down on the steamer, as they in fact did, they having nothing to do but to keep their course, and let the steamer keep hers, as the libel admits she did.

12. That, until the change of the schooner's course, there was no reason whatever for the steamer to change hers; and if the steamer had changed her course to the westward, as the libel suggests, instead of to the eastward, as on the moment she did, the only result, at the short distance between the vessels, would have been to bring the steamer upon the schooner more amidships, and thereby probably cause more immediate destruction of the schooner, with the loss of all on board.

13. That the course pursued on board the steamer was *was* that rendered proper by a prudent and seamanlike consideration of the circumstances, and should exonerate her, and her officers and crew, from all responsibility in the premises.

14. That all and singular the premises are true; wherefore the respondents pray that your honor will pronounce against the said libel, with costs against the libellants, and otherwise decree as to justice may appertain, &c.

W. SCHLEY, and
S. T. WALLIS,
For Respond'ts.

Sworn to before me, by Noah Fairbanks, this 14th day of December, A. D. 1854.

JOHN HANAN,
U. S. Com. for Md.

First Commission.

The UNITED STATES OF AMERICA,
District of Maryland, to wit:

To Louis Finney, esquire, of Accomac county, Virginia, greeting:

Be it known, that you are appointed commissioner to examine evidences in a cause now depending in the district court of the United States in and for the Maryland district, between Mitchell W. West, libellant, and the steamboat Virginia, respondent: Therefore, you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such evidences as shall be named or produced to you by either the libellant or respondent, and that you examine them upon their corporal oaths, to be by you administered upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid; and, having reduced the depositions of the witnesses so taken by you into writing, you send the same, with this commission, closed under your hand and seal, to the said district court, with all convenient speed. Witness the honorable William F. Giles, judge of our said district court, the first Tuesday in December, in the year of our Lord one thousand eight hundred and fifty-four.

[SEAL.]

Issued 2d January, 1855.

THO. SPICER, *Cl'k Dist. Ct.*

Commissioner's Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses

produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter, before the said commission is closed, be produced to and left with you by either party. So help you God.

LOUIS C. H. FINNEY.

Sworn to and subscribed before me, a justice of the peace for Accomac county and State of Virginia, this 17th day of January, A. D. 1855.

SAMUEL M. HOPKINS, *J. P.*

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down and transcribe the depositions of all and every the witness and witnesses produced before and examined by the commissioner named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioner to take, write down and transcribe the said depositions, or any of them. So help you God.

T. J. RUFFIELD.

Sworn to and subscribed before me this 17th day of January, A. D. 1855.

LOUIS C. H. FINNEY,
Commissioner.

Deposition of James West.

MITCHELL W. WEST
vs.
THE STEAMBOAT VIRGINIA, HER TACKLE, APPAREL, &c.

Libel in the District Court of the United States for district of Maryland.

The deposition of James West, aged 33 years, taken, to be read as evidence for the libellant, on the trial of the above cause, who, being first duly sworn, deposes and says to the interrogatories propounded by the said libellant, as follows:

1st interrogatory. Do you know the parties to the above cause; and, if yea, how long have you known them, or either of them?

Answer. Yes, sir. I have known General West for eight years; and I have known the steamer Virginia ever since she was built.

2d interrogatory. Did you, or do you now, know the schooner Lovy Harrison, late of Accomac county, in the State of Virginia; and, if yea, when and where did you last see said schooner, and in what condition was she?

Answer. Yes, sir, I did know her; I saw her last a-sinking in the bay; all sunk down, with the steerage-way just out.

3d interrogatory. Were you on board the said schooner Lovy Harrison on her last voyage in the month of October last from Accomac

county aforesaid to the city of Baltimore and back again to the county aforesaid; and, if yea, in what capacity were you employed on board said vessel on said voyage?

Answer. Yes, sir. I was employed as second in command, or mate.

4th interrogatory. Did the said schooner Lovy Harrison leave the port of Baltimore on her homeward trip in the month of October aforesaid, light, or in ballast; or, was said schooner loaded; and, if loaded, of what did her cargo consist; and was she heavily loaded, or otherwise; and to whom did her cargo belong; state particularly?

Answer. She was loaded, but not loaded deep; her cargo consisted of merchandise, dry goods, &c.; she was not heavily loaded; her cargo belonged to General Mitchell W. West, as far as I know.

5th interrogatory. State as fully and particularly as you can the incidents which occurred on the voyage of said schooner above mentioned from Baltimore to Accomac county in October last, touching the safety of said schooner and her cargo; if any such incidents did so occur, and when and where they did occur?

Answer. We started and got down to Sharp's Island, and, between two and three o'clock in the morning, the steamboat Virginia run into the schooner Lovy Harrison and sunk her; the said steamer cut off the bow and carried away the foremast of the said schooner Lovy Harrison. This occurred in the month of October, opposite Sharp's Island.

6th interrogatory. Did any collision take place upon the voyage aforesaid from Baltimore to Accomac county in October last between the said schooner Lovy Harrison and any other vessel; and, if yea, state the name of such other vessel and the ports between which she plyed or traded, the size of such other vessel, and whether such other vessel was a steamboat or a vessel propelled by sails; state, also, when and where such collision, if any, occurred; the course said schooner was steering, and the course such other vessel was steering before and at the time of such collision; the quarter from which the wind was blowing; and whether the wind was light or strong; in what part of the Chesapeake bay said collision, if any, occurred; whether said schooner and such other vessel were nearer to the eastern or western shore of said bay; and which of said two vessels was nearer to said eastern or western shore, and at the time said collision took place; state fully and minutely all and every particular within your knowledge and recollection touching the circumstances connected with said collision?

Answer. Yes. It was the steamboat Virginia; she traded from Fredericksburg to Baltimore; she was above ordinary size of vessels, and was a steamboat. The collision occurred in October, 1854, opposite Sharp's Island. The schooner was steering south, and the steamboat was steering north by east, as near as I can tell. At the time of the collision the wind was light and blowing from the westward; the collision occurred opposite Sharp's Island, in the Chesapeake bay; the steamer and schooner were both nearer to the eastern shore, though

the schooner was the nearest to the eastern shore at the time of said collision. I was at the helm when we first saw the steamboat, and I supposed she was from two to three miles off at the time I first saw her; she continued running down on us. As soon as we saw the steamboat, we immediately made our light. Our light was up from four to five minutes before she run into us. I put the light in the fore rigring, on the starboard side, about eight or ten feet high. Captain Harrison called to them to keep away to the westward; they did not keep away, but steered right for us. Captain Harrison also hallowed to them to stop the steamer repeatedly and loud, but they never stopped the steamer until she run into us and cut through us so as to sink the schooner.

7th interrogatory. If in your answer to the fifth or sixth interrogatory above written, that a collision did occur on the voyage or trip of said schooner therein mentioned, then please to state whether said collision occurred at night or in the daytime; and if at night, about what hour of the night, and whether the night was dark or starlight, or moonlight, or a bright moonlight, and how far a vessel of the size of said schooner could have been seen on such a night, at the time and before such collision occurred?

Answer. The said collision occurred at night, between two and three o'clock; it was a starlight and moonlight night. I think that a vessel of the size of the Schooner Lovy Harrison could have been seen from a half a mile to a mile from the steamboat.

8th interrogatory. State whether the Schooner Lovy Harrison was staunch and strong, and well and sufficiently manned and equipped, upon her said voyage from Baltimore to Accomac county, and whether she carried a lamp or lamps, or lights to exhibit to approaching vessels at night; and whether or not a light or lights were shown at the time of and before the collision aforesaid, (if any such collision did occur,) and how long before said collision was such light or lights shown, and from what part of said schooner were such light or lights exhibited, and how far from said schooner was the vessel with which said schooner came into collision, from said schooner, when said schooner's lights were shown first?

Answer. Yes; she was staunch and strong, and well and sufficiently manned and equipped, on her said voyage from Baltimore to Accomac county; she carried a lamp; the light was shown as soon as we could make it; say from four to five minutes before the collision; the light was shown in the forward rigging on the starboard side; the schooner was from a half mile to a mile from the steamer when our light was shown.

9th interrogatory. If in your answer to either of the foregoing interrogatories, you shall say that the vessel which came into collision with the Schooner Lovy Harrison, upon the voyage or trip aforesaid, was the Steamboat Virginia plying between Baltimore and Fredericksburg, please to state how long a time you saw said steamboat before said collision occurred, and how far distant from said schooner said

steamboat was when you first saw her before said collision; whether the course of said schooner was changed to avoid said collision, and when, and if so, how far from said schooner was said steamboat when the course of said schooner was changed, if it were changed; and if the course of the said schooner was so changed, to what course or direction was it changed? State particularly.

Answer. From the time I first saw the Steamer Virginia, to the time of the collision, was about fifteen or twenty minutes; I supposed when I first saw said steamer, she was from two to three miles off; the course of the schooner was not changed to avoid said collision.

10th interrogatory. If in your answer to the next preceding interrogatory, you shall state that said schooner did change her course before said collision took place, please state why her course was changed, and whether, if said schooner had not changed her course, the said collision could have been avoided?

Answer. The schooner's course was not changed, and the collision could have been avoided by the steamer having changed her course.

11th interrogatory. If in answer to either of the preceding interrogatories, you shall state that a collision did take place upon the voyage or trip in said interrogatories mentioned, then please state whether any, and what efforts were made by those on board said schooner to avoid said collision, and whether any efforts could possibly been made by those on board said schooner, which could have avoided said collision?

Answer. As soon as we saw the steamer we made our lights and kept our course; we could have done nothing more than we did do to avoid said collision.

12th interrogatory. State whether any, and what efforts were made by those on board said steamer to avoid said collision, and whether the said steamboat could have avoided said collision, and how she could have avoided it?

Answer. There was no effort made at all on board of said steamer, so far as I could see, to avoid said collision; she could have avoided it by stopping or changing their course to the westward.

13th interrogatory. Did said steamboat change her course at the time, or shortly before said collision; and if yea, towards what direction, and, after such change of course, if any such change took place, did said steamboat head more towards said schooner than she did in the course she was steering before she changed it, or farther from her? State particularly the circumstances attending the change of courses, if any, both on the part of said steamboat and said schooner, and whether, if said steamboat had kept her course she was steering before she so changed it, the collision would have taken place?

Answer. The said steamer did not change her course, but ran down upon us.

14 interrogatory. State any other matter or thing you may know, material to the case of the libellant, as fully as if particularly interrogated thereto.

Answer. I think, from the course the said steamboat was steering, she would have run ashore in twenty minutes, if the collision had not taken place.

Cross-examined.—Cross-interrogatories on behalf of the Respondents.

1 cross-interrogatory. If you say you were on board the schooner Lovy Harrison at the time of the collision inquired of, please state in what capacity; whether you are a seaman, and have been for any, and what length of time; whether you are interested in the said schooner or her cargo, or were so interested at the time of said collision, and whether you have any, and what, interest in this controversy. Please state your age and the place of your residence.

Answer. I was in the capacity of mate; I am a seaman, and have been one from eight to ten years; I have no interest in the said schooner or her cargo, and was not interested at the time of the collision, and I have no interest in this controversy; I am 33 years of age, and my residence is in Accomac county, in the State of Virginia.

2 cross-interrogatory. State who was at the helm of the said schooner when the said collision took place, and who was steering her when the steamboat Virginia first hove in sight; state, also, whether any, and what, orders were given when the steamboat was first seen; how far the said steamboat then was from the schooner; whether the steamboat had not all her lights set, and was not steering on her usual and proper course.

Answer. I was at the helm myself, and I was steering her when the steamboat first hove in sight. The captain told me to keep my course; the steamboat was from two to three miles from us when we first saw her; she had lights, but I don't know whether she had all set or not, and was not steering in her usual and proper course.

3 cross-interrogatoty. State what was the direction in which the schooner and the steamer were respectively heading at the moment of collision, and what was their direction towards each other at the same moment.

Answer. The steamer was heading north by east, and the schooner was heading south; the steamer struck the schooner about her fore-chains, and cut her right round, and did not stop her engine until she cut herself loose.

4th cross-interrogatory. If you say that you have any knowledge of the ownership of either schooner or cargo, or both, or the value of either, before or after the collision, please state in detail the means and opportunities of your knowledge as to each fact to which you testify; and also state whether the same is hearsay, or of your own knowledge.

Answer. The schooner belonged to Captain James Harrison, and the cargo belonged to General Mitchell W. West. The schooner, I suppose, was worth fifteen hundred dollars; the cargo, I suppose, from what I heard General West say when we were taking it on board, was

worth five thousand dollars. If the vessel was mine, I would not take less than fifteen hundred dollars for her. My means of knowing the value of either is from hearsay, and not of my own knowledge.

5th cross-interrogatory. How far was the nearest land off from the place of collision; state what that land was, and also the depth of water where the collision happened.

Answer. As near as I can guess, the nearest land was from two to three miles off. The nearest land was Sharp's Island, and I suppose the depth of water was from six to eight fathoms.

6th cross-interrogatory. Of how many men did the officers and crew of the schooner consist, and how many of them were on board when the collision took place; how many on deck?

Answer. We were three in crew, and all on board, and two on deck when the collision took place.

7th cross-interrogatory. When the steamer was first seen from on board the schooner, to your knowledge, did not the master or person in command direct that she should keep away before the wind? Did the schooner so keep away, or did she luff; or what change was made in her course, and when and by whose order?

Answer. The master or person in command did not so direct; she kept her course, and no change was made in her course.

8th cross-interrogatory. Had the schooner any light out when the steamer first hove in sight? If yea, what sort of light was it, and where was it placed? Describe its character and location particularly; and also state if there was not light out on board the schooner when the steamer hove in sight; how long was it before any light was shown, and the manner and place in which such light was shown, if at all.

Answer. She had no light out when the steamer hove in sight, but we got a light up immediately; it was a globe lamp light; it was placed in the forward rigging on the starboard side, and from eight to ten feet high.

9th cross-interrogatory. Did you not hear the master of the schooner declare, on board the steamboat, that he had kept away from the time he first saw the steamer, and continued so to do till the collision, and that the collision had taken place because he had done so?

Answer. No, sir. I did not hear him say so.

10th cross-interrogatory. If you say that the steamboat changed her course, state whether it was before or after the change of course on the part of the schooner; state further whether the said collision would ever have taken place if both vessels had kept on their courses they were respectively following, when the steamer was first seen from on board the schooner; state also how long it was, as nearly as you can, between your first seeing the steamboat and the time of collision?

Answer. The steamboat did not change her course, and the schooner kept her course, and of course the collision would have taken place, following their respective courses. It was about fifteen or twenty

minutes, as near as I can guess, from first seeing the steamboat to the time of the collision.

And further deponent saith not.

his
JAMES ⋈ WEST.
mark.

STATE OF VIRGINIA,
Accomac County, to wit:

On this 17th day of January, anno Domini one thousand eight hundred and fifty-five, by virtue of the annexed commission, I, Louis C. H. Finney, to whom the same is directed, having taken and subscribed the accompanying oath, and appointed Thomas J. Rayfield as clerk to attend the execution of said commission, and administered to him the annexed oath, caused to come before me, at the court-house of said county on the day before written, the same being the time and place appointed, James West, the only witness named or produced to me, by either the libellant or respondents named in the caption hereto, and examined him upon his corporal oath by me administered upon the Holy Evangely of Almighty God, touching his knowledge or remembrance of any thing that may relate to the cause aforesaid, propounding to said witness the interrogatories of the libellants, and the cross-interrogatories of the respondents; and having reduced the deposition of said witness to writing as before written, send the same with said commission, closed under my hand and seal, to the said district court of the United States in and for the Maryland district.

Given under my hand and seal.

LOUIS C. H. FINNEY, *Com'r*, [SEAL.]

Cost of Executing Comm'n.

Commissioner - - - - - - - -	$25 00
Clerk - - - - - - - - -	4 50
Witness - - - - - - - - -	66
	$30 16

Agreement.

MITCHELL W. WEST
vs.
STEAMER VIRGINIA.

JAMES H. HARRISON
vs.
STEAMER VIRGINIA.

In the District Court of the United States for the Maryland district.

It is agreed between the undersigned, proctors of the respective parties to the above two cases, that John W. Gillet, of Accomac county, Vir-

ginia, be substituted as commissioner to take testimony in the place of Louis Finney, esqr., heretofore appointed.

ST. GEO. W. TEACKLE,
For Libell'ts,
S. T. WALLIS,
For Respondents.

2d Commission.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

[SEAL.] To John W. Gillet, esqr., of Accomac county, in the State of Virginia, greeting:

Be it known, that you are appointed commissioner to examine evidence in a cause now pending in the district court of the United States in and for the Maryland district, between Mitchell W. West, libellant, and the Steamer Virginia, respondent.

Therefore you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such evidences as shall be named or produced to you by either the libellants or respondents, and that you examine them upon their corporal oaths, to be by administered upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of any thing that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you into writing, you send the same with this commission, closed under your hand and seal, to the said district court with all convenient speed.

Witness the honorable William F. Giles, judge of our said district court, the first Tuesday in December, in the year of our Lord one thousand eight hundred and fifty-four.

Issued 10 Feb'y, 1855.

THO. SPICER, *Cl'k Dis. Ct.*

Commissioner's Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every the witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter, before the said commission is closed, be produced to or left with you by either party. So help you God.

J. W. GILLET.

Sworn to and subscribed before me, a justice of the peace in and for the county of Accomac, in the State of Virginia, in my said county, this 5th day of March, A. D. 1855.

THO'S LITTESTON, *J. P.*

Clerk's Oath.

You shall, truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down and transcribe the depositions of all and every the witness and witnesses produced before and examined by the commissioner named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioner to take, write down the said depositions or any of them. So help you God.

T. J. RAYFIELD.

Sworn to and subscribed before me this 5th day of March, A. D. 1855.

J. W. GILLET,
Commissioner.

Deposition of James H. Harrison.

MITCHELL W. WEST, libellant,
vs.
THE STEAMER VIRGINIA, her tackle, apparel, &c., respondent.

In the District Court of the United States for district of Maryland.

The deposition of James H. Harrison, aged fifty-three years, a citizen of the county of Accomac, in the State of Virginia, taken, to be read in evidence for the libellant in the above entitled cause, who, being first duly sworn, deposes and says, in answer to the interrogatories, as follows, to wit, to the interrogatories propounded on behalf of the libellant.

1 interrogatory. Do you know the parties to the above cause; and if yea, how long have you known them or either of them?

Answer. Yes; I know the parties; I have known the libellant some twenty years at least, and the Steamer Virginia some two years, more or less; I have known her ever since she was built.

2d interrogatory. Did you or do you now know the schooner Lovy Harrison, late of Accomac county, in the State of Virginia; and if yea, when and where did you see said schooner, and in what condition was she?

Answer. I do, or did; I last saw her off Sharp's Island light, in October last; she was sunk, with her steerage just out, with her mainmast and main-rigging standing.

3d interrogatory. Were you on board the said schooner Lovy Harrison, on her last voyage, in the month of October last, from Accomac county aforesaid, to the city of Baltimore and back again to the county aforesaid; and if yea, in what capacity were you employed on said vessel, on said voyage?

Answer. I was; I was master and owner of said vessel.

4th interrogatory. Did the said Schooner Lovy Harrison leave the port of Baltimore on her homeward trip in the month of October aforesaid, light or in ballast, or was said schooner loaded; and if loaded, of what did her cargo consist, and was she heavily loaded or otherwise, and to whom did her said cargo belong; state particularly?

Answer. She was loaded, but not heavily loaded; she was a streak clear of the bends; she was full; the cargo consisted of groceries and dry goods, an assortment of merchandise; the whole cargo, or nearly the whole, belonged to Genl. West, the libellant.

5th interrogatory. State, as fully and particularly as you can, the incidents which occurred on the voyage of said schooner above mentioned, from Baltimore to Accomac county, in October last, touching the safety of said schooner and her cargo, if any such incidents did so occur, and when and where they did occur?

Answer. We left Baltimore on Monday evening about seven o'clock, and came down with a fair wind, without any difficulty; nothing took place until we came down to Sharp's Island light; we made the steamboat, I suppose, about two o'clock in the morning, to the westward of us; as soon as I made the steamboat, I directed my mate to keep the course he was steering, which was a south course; I immediately lighted my lamp, (globe lamp,) and put it in the fore-rigging on the starboard side; I suppose, from eight to ten feet high; I then examined immediately the course which my mate was steering, and that he was steering his proper course; I found that the steamboat was running for the eastern land; her course, at the time, was north by east, when I examined her; I discovered that the closer she came to me, the nearer she came for me, until she got within about a hundred yards; I saw that she would run me down if she kept the course she was then steering; I commenced hallowing to the steamboat to keep to the westward, and to stop her; there was no effort made on the steamboat's part, until the collision took place. The engine of the steamboat remained at work until she came alongside, and her wheels were crushing the side of my vessel, keeping her down; I was then struck by the wheel, as I supposed, rendered insensible, and knew nothing during the time I was lying on the deck; my men cut the david-falls that held the boat, and let the boat down, and got in the boat, and Genl. West with them; I had then come to my senses, and called to my men, in the boat, to let me get in, and in getting in the boat, I was so weak that I fell in; we then made an effort to go on board of the steamer; some person on board of the steamboat sent a boat after us, and met us about half-way; the last I saw of the vessel, she was in a sinking condition, as I have stated before.

6th interrogatory. Did any collision take place upon the voyage aforesaid from Baltimore to Accomac county in October last, between the said schooner Lovy Harrison and any other vessel; and, if yea, state the name of such other vessel and the ports between which she plied or traded, the size of such other vessel, and whether such other vessel was a steamboat or a vessel propelled by sails; state, also, when

and where such collision; the course said schooner was steering, and the course such other vessel was steering before and at the time of such collision; the quarter from which the wind was blowing, and whether the wind was light or strong; in what part of the Chesapeake bay said collision, if any, occurred; whether said schooner and such other vessel were nearer to the eastern or western shore of said bay, and which of said two vessels was the nearest to the said eastern or western shore before and at the time said collision took place; state particularly and minutely all and every particular within your knowledge and recollection touching the circumstances connected with said collision?

Answer. Yes, sir. A collision with the steamboat Virginia, trading between Baltimore and Fredericksburg; she was a steamboat over the ordinary size. The collision took place at Sharp's Island light, I suppose, between two and three o'clock in the morning next after I left Baltimore The schooner was heading south, and the other vessel north by east, before the collision. The course of the schoner was never changed, nor was that of the other vessel, to the best of my knowledge. If the steamboat had been steering her proper course, and the one which other steamboats steer, she would not have come within a mile or a mile and a half of me. The wind was about west, and blowing very moderately. The collision took place off Sharp's Island, as I have before stated; both vessels were nearer to the eastern shore of said bay. The schooner was nearer to the eastern shore, the steamboat being to the westward of the schooner. The particulars within my knowledge connected with the collision have been stated before.

7th interrogatory. If in your answer to the fifth or sixth interrogatory above written, that a collision did occur on the voyage or trip of said schooner therein mentioned, then please to state whether said collision occurred at night or in the daytime; and, if at night, about what hour of the night, and whether the night was dark, starlight, or moonlight, or a bright moonlight, and how far a vessel of the size of said schooner could have been seen on such a night at the time and before such collision occurred?

Answer. The collision took place about two or three o'clock at night. The night was a starlight and bright moonlight night, the moon being about three hours high. A vessel of the size of said schooner could have been seen from a mile to a mile and a half with her sails up.

8th interrogatory. State whether the schooner Lovy Harrison was staunch and strong, and well and sufficiently manned and equipped upon her said voyage from Baltimore to Accomac county; and whether she carried a lamp or lamps, or lights, to exhibit to approaching vessels at night; and whether or not a light or lights were shown at the time of and before the collision aforesaid, (if any such collision did occur,) and how long before said collision was such light or lights shown, and from what part of said schooner were such light or lights exhibited, and how far from said schooner was the vessel with which said schooner

came into collision from said schooner when said schooner's lights were shown first?

Answer. She was; she carried a lamp, and a light was shown at the time of and before the collision, and I think from five to seven minutes before the collision took place. The light was exhibited on the starboard side in the forward rigging from eight to ten feet high. The steamboat was distant from the schooner when the light was first shown from two miles to two miles and a half.

9th interrogatory. If in your answer to either of the foregoing interrogatories you shall say that the vessel which came into collision with the schooner Lovy Harrison upon the voyage or trip aforesaid was the steamer Virginia, plying between Baltimore and Fredericksburg, please state how long a time you saw said steamboat before said collision occurred, and how far distant from said schooner said steamboat was when you first saw her before said collision; whether the course of said schooner was changed to avoid said collision, and when; and if so, how far from said schooner was said steamboat when the course of said schooner was changed, if it were changed; and of the course, if said schooner was so changed; to what course or direction it was changed; state particularly?

Answer. I saw said steamboat from ten to fifteen minutes before the collision occurred; and when I first saw the steamboat, she was distant from two and a half to three miles; the course of the schooner was never changed; I am as well satisfied of that as I am that I am living.

10th interrogatory. If in your answer to the next preceding interrogatory you shall state that the said schooner did not change her course before said collision took place, please state why her course was changed, and whether if said schooner had not changed her course the said collision could have been avoided.

Answer. The course of the schooner was not changed.

11th interrogatory. If in answer to either of the preceding interrogatories you shall state that a collision did take place upon the voyage or trip in said interrogatory mentioned, then please state whether any and what efforts were made by those on board said schooner to avoid said collision, and whether any efforts could possibly have been made by those on board said schooner which could have avoided said collision.

Answer. We kept our course and showed our lights, and called to those on board said steamboat to stop the steamboat and keep to the westward. No effort could have been made by those on board the said schooner which could possibly have avoided said collision. We did all that could have been done.

12th interrogatory. State whether any and what efforts were made by those on board said steamer to avoid said collision, and whether the said steamboat could have avoided said collision, and how she could have avoided it.

Answer. None that I know of. The steamboat could have avoided said collision by keeping to the westward or stopping easily.

13th interrogatory. Did said steamboat change her course at the time, or shortly before said collision; and, if yea, towards what direction; and after such change of her course, if any such took place, did said steamboat *nere* towards said schooner than she did in the course she was steering before she changed it, *for* further from her? State particularly the circumstances attending the change of course, if any, both on the part of said steamboat and said schooner, and whether if said steamboat had kept the course she was steering before she so changed it the collision would have taken place.

Answer. The steamboat did not change her course that I know of.

14th interrogatory. State any other matter or thing you may know material to the case of the libellant, as fully as if particularly interrogated thereto.

Answer. When I went on board said steamboat, and while sitting in the saloon, Cap't Fairbanks, the captain of the steamer Virginia, said that if he had always to be deck to watch the pilots to see that they were on duty, that he had better be without them.

Cross-examined.

To cross-interrogatories on behalf of the respondents:

1st cross-interrogatory. If you say you were on board the schooner Lovy Harrison at the time of the collision, please state in what capacity; whether you are a seaman, or have been for any and what length of time; whether you are interested in the said schooner or her cargo, or were so interested at the time of said collision; whether you have any and what interest in this controversy. Please state, also, your age and the place of your residence.

Answer. I was master and owner; I am a seaman, and have been for forty-one years; I have crossed the Atlantic Ocean twenty times; I was on the Charleston and Carolina *coat* for eighteen months; about thirteen months on the New York coast in Mankin's line in Baltimore; I sailed the line of packets from Accomac to Yorktown, Hampton, and Norfolk for twenty-one years; in steamboats altogether four years; I was interested, and am now interested, in the schooner as her owner; I have no interest at all in this controversy; I shall be fifty-four years of age on the seventeenth day of the present month, and my residence is in Accomac county, Virginia.

2d cross-interrogatory. State who was at the helm of the said schooner when the said collision took place, and who was steering her when the steamboat Virginia first hove in sight. State also whether any and what orders were given when the steamboat was first seen; how far the said steamboat then was from the schooner; whether the steamboat had not all her lights sets, and was not steering on her usual and proper course.

Answer. Mr. James West, my mate, and he was steering her when the steamboat Virginia first hove in sight; I directed him to keep his course. The steamboat was then distant from two and a half to three

miles; she had lights, but I don't know whether she had all her lights set; she was not steering on her usual and proper course; she was steering two points off her proper course.

3d cross-interrogatory. State what was the direction in which the steamer and the schooner were respectively heading at the moment of the collision, and what was their direction towards each other at the same moment.

Answer. The schooner was heading about a south course, the steamer north by east. At the moment of collision, the steamer was heading bow on about the forechains of the schooner.

4th cross-interrogatory. If you say that you have any knowledge of the ownership of either schooner or cargo, or both, or of the value of either, before or after the collision, please state, in detail, the means and opportunities of your knowledge as to each fact to which you testify; and also state whether the same is hearsay or of your own knowledge.

Answer. I know I purchased the vessel of Mr. Ames, and that I was and am the owner of her. The libellant went to Baltimore with me, and purchased his goods in Baltimore, and sent them down to me on wharf, and I received them on board. The principal part of the boxes, &c., were marked in his name, and I signed receipts for them to the drayman who brought them down. These facts I know of my own knowledge, and not of hearsay.

5th cross-interrogatory. How far was the nearest land off from the place of collision? State what that land was, and also the depth of water where the collision happened.

Answer. From two and a half to three miles; Sharp's Island was the land; and the depth of water where the collision took place was from six to seven fathoms, as I suppose.

6th cross-interrogatory. Of how many men did the officers and crew of said schooner consist, and how many of them were on board when the collision took place—how many on deck?

Answer. Three, and all on board at the time of collision; and two, myself and Mr. James Weston, the mate.

7th cross-interrogatory. When the steamer was first seen from on board the schooner, to your knowledge, did not the master or person in command direct that she should be kept away before the wind? did the said schooner so keep away, or did she luff; or what change was made in her course, and when and by whose order?

Answer. No, sir; and no change in her course was made, and no change was ordered; I directed Mr. West to keep his course.

8th cross-interrogatory. Had the schooner any light out when the steamer first hove in sight? if yea, what sort of light was it, and where was it placed? describe its character and condition particularly, and also state if there was no light on board the schooner when the steamboat hove in sight, how long it was before any light was shown, and the manner and place in which such light was shown, if at all.

Answer. No, sir; she had no light out when the steamboat first hove

in sight; it was from two to three minutes after the steamboat hove in sight before a light was shown; the light was a globe lamp, placed in the starboard fore-rigging by myself, from eight to ten feet high.

9th cross-interrogatory. Did you not hear the master of the schooner declare, on board the steamboat, that he had kept away from the time he first saw the steamboat, and continued so to do till the collision, and that the collision had taken place because he had done so?

Answer. No, sir; no such thing was said.

10th cross-interrogatory. If you say that the steamboat changed her course, state whether it was before or after the change of course on the part of the schooner; state, further, whether the said collision would ever have taken place if both vessels had kept on their courses they were respectively following when the steamer was first seen from on board the schooner; state, also, how long it was (as near as you can) between your first seeing the steamboat and the time of collision.

Answer. They both kept on the same course which they were respectively following when the steamer was first seen from on board the schooner; it was from ten to fifteen minutes from the time of my first seeing the steamboat to the time of collision.

And further deponent sayeth not.

JAMES H. HARRISON.

STATE OF VIRGINIA,
Accomac county, to wit:

On this fifth day of March, anno Domini one thousand eight hundred and fifty-five, by virtue of the annexed commission, I, John W. Gillet, to whom the same is directed, having taken and subscribed the accompanying oath, and appointed Thomas J. Rayfield as clerk to attend the execution of said commission, and administered to him the annexed oath, and caused to come before me, at the court-house of said county, on the day and year above written, (the same being the time and place appointed,) James H. Harrison, the only witness named or produced to me by either the libellant or respondent named in the caption hereto, and examined him upon his corporal oath, by me administered upon the Holy Evangely of Almighty God, touching his knowledge or remembrance of anything that may relate to the cause aforesaid, propounding to said witness the interrogatories of the libellant and the cross-interrogatories of the respondent, and having reduced the deposition of said witness to writing, as before written, send the same, with the said commission, closed under my hand and seal, to the district court of the United States in and for the Maryland district.

Given under my hand and seal the day and year first above written.

J. W. GILLET, [SEAL.]

Costs of Commission.

Commissioner - - - - - - - - -	$5 00
Clerk - - - - - - - - - - -	3 75
Witness - - - - - - - - - -	66
	$9 41

Decree.

MITCHELL W. WEST and others
vs.
THE STEAMER VIRGINIA.

In the District Court of the United States for the Maryland district—In admiralty.

This cause coming on for hearing, and the proceedings and proofs being read and considered, it is thereupon, this twenty-sixth day of March, A. D. 1855, by this court, ordered and adjudged, and decreed, that the libellants recover of the said Steamboat Virginia for the damages received by the collision in the proceedings complained of, as follows:

That the libellant, Mitchell W. West, recover the sum of three thousand one hundred and seventy-six dollars and thirty-one cents.

That the libellants, Albert R. Heath and James J. Edwards, recover the sum of thirty-five dollars and eighty cents.

That the libellant, William T. Bell, recover the sum of sixty-eight dollars and ninety-seven cents.

That the libellants, Thomas C. Bunting and Lecato, recover the sum of seventy dollars and sixty-nine cents.

That the libellant, John M. Henderson, recover the sum of twenty-five dollars.

And it is further ordered, adjudged and decreed, that unless the owners of the said Steamer Virginia, or the stipulators, John R. Gwynn, Richard J. Capron and John J. Husband, shall, within twenty days from the date hereof, pay unto the said libellants, respectively, the sums of money so as aforesaid adjudged to be paid to them, and all costs of this proceeding; the said Steamer Virginia, with her boats, tackle, apparel, and furniture, shall be sold by the marshal for the satisfaction of the several sums of money so as aforesaid adjudged to be paid, and all costs, according to the course of admiralty and of this court.

WILLIAM F. GILES.

From which said decree so as aforesaid passed, the said owners and claimants of the said Steamer Virginia, by their proctors in open court here, pray an appeal to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in April next, and to them it is granted.

Thereupon it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said circuit court, and the same are hereby transmitted accordingly.

Appeal Bond.

Know all men by these presents, that we, Richard J. Capron, John R. Gwynn, and John T. Gwynn, are held and firmly bound unto Mitchell W. West, Albert R. Heath, James J. Edwards, William T. Bell, Thomas C. Bunting, Lecato, and John M. Henderson, of Accomac county, in the State of Virginia, in the just sum of six thousand dollars, lawful money of the United States, to be paid to the said Mitchell W. West, Albert R. Heath, James J. Edwards, William T. Bell, Thomas C. Bunting, Lecato, John M. Henderson, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this thirtieth day of March, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas at a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in March, in the year of our Lord one thousand eight hundred and fifty-five, the said district court made and passed the following decree, to wit:

It is thereupon, this twenty-seventh day of March, A. D. 1855, by this court, ordered, adjudged and decreed, that the libellants recover of the said Steamer Virginia for the damages received by the collision in this proceeding complained of, as follows:

That the libellant, Mitchell W. West, recover the sum of three thousand one hundred and seventy-six dollars and thirty-one cents.

That the libellants, Albert R. Heath and James J. Edwards, recover the sum of thirty-five dollars and eighty cents.

That the libellant, William T. Bell, recover the sum of sixty-eight dollars and ninety-seven cents.

That the libellants, Thomas C. Bunting, Lecato, recover the sum of seventy dollars and sixty-nine cents.

That the libellant, John M. Henderson, recover the sum of twenty-five dollars.

And it is further ordered, adjudged and decreed, that unless the owners of the said Steamer Virginia, or the stipulators, John R. Gwynn, Richard J. Capron, and John J. Husband, shall, within twenty days from the date hereof, pay to the said libellants, respectively, the sums of money so as aforesaid adjudged to be paid to them, and all costs of this proceeding; the said Steamer Virginia, with her boats, apparel, tackle, and furniture, shall be sold by the marshal for the satisfaction of the said sums of money so as aforesaid adjudged to be paid, and costs.

From which said decree, so as aforesaid passed, the owners and claimants of the said Steamer Virginia prayed an appeal to the circuit court of the United States for the fourth circuit in and for the Maryland district, on the first Monday in April next.

Now, the condition of the above obligation is such, that if the said owners and claimants of the said Steamer Virginia shall well and truly prosecute with effect their said appeal, and pay unto the said Mitchell W. West, Albert R. Heath, James J. Edwards, William T. Bell, Thomas C. Bunting, Lecato, and John M. Henderson, their heirs, executors, administrators, or assigns, the amount of the said decree, costs, and charges aforesaid, decreed unto them by the said district court, and also all such damages, costs, and charges as shall be awarded unto them by the said circuit court, in case the said appellants shall fail to make good their said appeal, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue.

RICH'D J. CAPRON, [SEAL.]
JOHN R. GWYNN, [SEAL.]
JOHN T. GWYNN. [SEAL.]

Signed, sealed and delivered, in presence of—
S. O. WATERS.

Bond approved 31st March, 1855.

WILLIAM F. GILES.

In testimony that the aforegoing is a true copy, taken from the record and proceedings of the district court aforesaid, [SEAL.] I hereunto subscribe my name and affix the seal of the said district court, this fourth day of April, in the year of our Lord one thousand eight hundred and fifty-five.

THO. SPICER, *Cl'k Dist. Ct.*

Afterwards, to wit, on the tenth day of April, in the year of our Lord one thousand eight hundred and fifty-five, the said appellants, by their proctors aforesaid, filed in the circuit court here the deposition of Robert Travers, in the words following, to wit:

Deposition of Robert Travers, witness for the Appellants, taken before John Hanan, esquire, United States Commissioner, at the city of Baltimore, on the 10*th day of April*, 1855.

Deponent is and was the mate of the steamer Hugh Jenkins at the time of the collision between the steamer Virginia and the schooner Lovy Harrison. The Hugh Jenkins brought to Baltimore a portion of the passengers of the Virginia, the latter being at the time ashore on Tilghman's Island bar. The Hugh Jenkins took on board the said passengers, on her trip to Cambridge, Maryland; carried the passengers to Cambridge, and thence brought them to this city. There was a white man among them, who told deponent he belonged to the Lovy

Harrison; deponent does not know his name; he did not tell deponent in what capacity he was on board the Lovy Harrison; he said he was at the helm of the schooner at the time of the collision. He said that when they saw the steamer Virginia moving towards them, the captain of the schooner told him to keep the schooner off, and he did so. He said he thought if they had not kept off, they might have kept clear of the steamer. Keeping off, means keeping more before the wind; the wind on that occasion was from the west, as witness was informed; keeping off would throw the vessel further east. If the vessel was going down the bay with a westerly wind, keeping off would be a change of her course, if she was keeping her right course before. The person of whom the deponent has spoken, and who represented himself as the helmsman of the schooner, stayed on board the Hugh Jenkins at Easton, the night they were taken on board; after supper he was sitting in the saloon, and deponent asked him about the collision, and he went on and told him what he has above stated. He did not attribute the collision to anything in particular; he did not say to him whose fault it was, or what caused the collision; he merely stated what deponent has stated above. Deponent has no doubt that the man did belong, as he stated, on board the Lovy Harrison. His reason for believing this man belonged to the schooner was, because he said so himself, and because several gentlemen whose names witness does not now remember, but who came on board the Hugh Jenkins from the Virginia, told deponent the same thing. When they reached the wharf at Baltimore, a young man whom he did not know came down and inquired if there was a man there belonging to the schooner Lovy Harrison. Deponent told him there was, but deponent being engaged with his business, did not notice if they went off together, or not.

ROBERT TRAVERS.

Afterwards, to wit, on the twelfth day of April, in the year of our Lord one thousand eight hundred and fifty-five, the said appellants, by their proctors aforesaid, filed in the circuit court here the depositions of Joseph Cragg, John Fields and Solomon G. Saunders, in the words following, to wit:

Deposition of Joseph Cragg, witness for the Appellants, taken before John Hanan, esq., United States Commissioner at the city of Baltimore, on the 12th day of April, 1855.

Deponent was engineer of the steamer Virginia, and was on board of her at the time of her collision with the Lovy Harrison. At the time of the collision deponent was in his berth asleep; about half an hour before the collision, witness had turned in, leaving Mr. Williamson, the assistant engineer, in charge of the engine. Mr. Fields was then in charge of the deck. Deponent noticed the weather before he turned in; there was a light wind blowing from the W. N. W. about, which would carry a vessel some three or four miles an hour. Deponent was roused by the shock of the collision, or the blowing off of the steam, and ran out on the forward deck. The steamer was heading a

little to the east of north; noticed this particularly, as one of his first objects was to ascertain the position of the steamer in the bay; found, as he has said, that she was heading a little to the east of north, Sharp's Island light-house being a little abaft the beam, on the starboard side. I found we had come in collision with a vessel; her jib-stay was laying across our forward deck, having broke down the rail and waist of the steamer on the starboard side to the deck, and thrown out the forward gangway on the larboard side. Deponent heard at this time a rumbling noise under the bottom of the steamer, and went immediately into the forward hold and found the steamer leaking very badly, which deponent reported to Captain Fairbank, when he told him to order the pilot to head the steamer for the land. After deponent came out of the fore-hold, he heard Fields on the after-part of the upper deck at the tackle of the boat, waiting for her return from the schooner. The steamer had stopped when deponent first got out. The wind had freshened a great deal from about the same quarter, blowing a whole-sail breeze; about a seven-knot breeze for a vessel like the Lovy Harrison. The sky was clear; it was a moon and starlight night; the moon gave but little light, being about ten degrees above the horizon, and very small, being her last quarter; the horizon was smoky, so as to give the moon a red appearance.

A vessel without a light, deponent thinks, could be seen about half a mile off; a light might have been seen, such a light as vessels usually carry, some four miles off; did notice if the steamer had her signal lights up. In pursuance of the captain's order, the steamer was headed for Black Walnut cove, behind Tilghman's Island; a few moments before she struck, deponent reported to the captain, that she could go but very little further, as the water was up to the furnaces.

The captain then gave some orders in regard to the alteration of her course, which resulted in her grounding, in a few moments, on Tilghman's Island, on the lower end; she remained there about fourteen hours; when we started for Baltimore, where we arrived at about 11 o'clock at night; before we started from Tilghman's Island, we had stopped the leak by means of blankets, and then pumped the steamer out.

There were four persons taken on board the steamer from the schooner; three white men and a negro; all of them but the captain, witness thinks, were taken off the Virginia by the Steamer Hugh Jenkins, with the mass of the passengers, about 11 a. m., or thereabouts, on the 17th of October. On reflection, deponent thinks Gen'l West remained on board the Virginia also; deponent had some conversation with Captain Harrison in the saloon of the Virginia, in regard to the collision; he told deponent when he first saw the steamer she was right ahead; he steering south, and bound for Pongoteague; that he (Harrison) immediately ordered the man at the wheel to keep away, which means, in nautical phrase, to keep off before the wind, which she contrived to do until she came into collision with the steamer; did not say how far off he saw the steamer.

The steamer had a plank broken through by the collision, on the larboard side, about ten feet abaft the stem, and about three and half feet below the water surface; she was repaired on the 18th October, by Cooper and Butler.

Cross-examined.

Deponent is chief engineer of the Steamer Virginia; the shortest space in which the steamer could be stopped in cases of emergency, would be fifty yards; they generally take seventy-five yards; this is done by stopping and reversing the engine; the Steamer Virginia is perfectly obedient to her helm. Deponent was attracted to the saloon by the cries of Captain Harrison; on entering, found him standing near the stove; he appeared much alarmed, and suffering much from pain; complained of a pain in his shoulder; he told me that the fore-mast, in its fall, he thought had struck him; deponent had a bed made for him convenient to the stove; took off his boots; stripped off his clothes, so as to look at his shoulder, and found it much bruised, as if chafed by a rope; he hugged deponent and said, God bless you, my dear friend, and told deponent what family he had; said he had nine children, and he had lost all he was worth; he did not act as a crazy man, he appeared very much alarmed and much hurt, but his indisposition was of short duration, for he made his appearance at the breakfast and dinner-table the same day, and ate as heartily as any body. The least visible variation going more before the wind, would be keeping off or keeping away; captain Harrrison did not say a word to deponent, in the above conversation, of the steamer's having changed her course; witness accounts for the hole on the larboard side of the steamer, in the following manner, by the inclination of the bow of the steamer; she would force beneath the water, a body so much lighter than herself, which, when come in contact with either extreme, would be forced round and make the hole in question.

Direct examination.

When Captain Harrison made to deponent the statement he has repeated, Captain Harrison appeared to know perfectly well what he was talking about.

JOSEPH CRAGG.

Deposition of John Fields, a witness for the appellants, taken before John Hanan, esq'r, U. States commissioner, at the city of Baltimore, on the 12th day of April, 1855.

Deponent was one of the pilots on board the Steamer Virginia; is a regularly licensed pilot; had charge of the deck of the Steamer Virginia at the time of the collision with the Lovy Harrison.

The collision took place 20 minutes after 3 o'clock, on the morning of the 17th of October last; deponent was on the look-out himself, and saw nothing ahead in sight; deponent was forced to go down into the water-

closet to do his business; was not there more than two minutes when the collision took place; is satisfied he had not been there two minutes; he left at the helm a colored man, who is a competent helmsman, and told him to watch a minute, while he went down; the pilot-house of the Virginia is on the upper deck, (witness means the second deck,) upon the front edge of the second deck; that is the best place on the steamer for a look-out, because we can see ahead, and on each side of us, better than in any other place on board the steamer; alongside the pilot-house, or inside of the pilot-house, is the place where the look-out generally is; the pilot on duty is always the look-out; on board of the Virginia, there is always a helmsman besides; a look-out stationed on the bow of the lower deck could not see as well as one stationed in or alongside of the pilot-house; in bad or stormy weather, a look-out stationed at the bow, on the lower deck, could not be heard at the pilot-house, without passing the word through a third party; deponent has tried both places, and finds that alongside or in the pilot-house is the best place for a look-out.

As soon as deponent felt the collision, he ran out of the water-closet; the schooner was then just alongside; the heads of the two vessels just about together just as deponent came out of the water-closet; the mast of the schooner fell across the deck of the steamer, and deponent called out to the helmsman to stop the steamer, which he did. The steamer was then heading north, a little easterly, about half a point to the east. North was about her proper course. The schooner was on the larboard side of the steamer.

As soon as the steamer stopped, heard the captain of the schooner cry out "Save us." Deponent had the steamer's boat lowered immediately and sent to them, and took them off and brought them on board the steamer. When deponent went down to the water-closet, the steamer was on her course. The man then in charge of the helm was a man accustomed to steering; he knew nothing about the bay, but could steer a very good trick at the wheel if you gave him a course. Before deponent went down into the water-closet, he took a look-out all around, and could see no lights except that of the steamer North Carolina, which was upon their larboard quarter, astern, about half a mile, following after us. It was hazy around the horizon; the moon was up about two hours high, but small; could have seen a light a mile ahead of us if the schooner had one in the right place; we could have seen her a mile ahead of us.

Deponent did not hear any of the persons who came aboard the steamer from the schooner say anything about the collision; the wind was about west northwest; a pretty good breeze or whole-sail breeze was blowing; would carry a vessel along at the rate of about seven miles an hour. All the steamer's signal lights were up. Joshua Reese was the other pilot on board the steamer Virginia. Deponent has been following the seas about thirty-five years, and has been a steamboat pilot for about twenty years.

Cross-examined.

When deponent left the upper deck to go down to the water-closet, the steamer was heading north; she was going then about thirteen miles an hour. Captain Fairbanks, deponent thinks, was asleep; at all events, he was not about. Joshua Reese, the other pilot, was asleep; it was his watch below. At the time he was leaving the deck to go to the water-closet, there was no one on deck but the colored man who was at helm. When deponent went below to the water-closet at the time spoken of in his examination in chief, he left no one in charge of the steamer, or on the look-out, but the colored man who was inside the wheel-house at the wheel; when deponent went down, he told him to look out for a minute while he went below. The water-closet is on the starboard side of the steamer, about thirty feet abaft the wheel, (or steerage-house,) on the lower or main deck. Deponent could not see approaching vessels from the water-closet. Did not see the schooner at all until the collision took place. The schooner was filled full of water. Deponent, that night of the collision, could have seen a vessel with her sails set about half a mile, he thinks, or such a matter.

Question. Will you be kind enough to state whether you were not suspended from your office as a pilot after this collision took place, in consequence of this very collision between the steamer Virginia and the schooner Lovy Harrison, by the board of inspectors of pilots; and, if so, for what length of time were you suspended?

(The above question objected to by the counsel for the appellants.)

Answer. That he was suspended for the period of three months on account of said collision.

JOHN FIELDS.

Deposition of Solomon S. Saunders, witness for the appellants, taken before John Hanan, esq., U. States commissioner, at the city of Baltimore, on the 12*th day of April,* 1855.

Deponent commanded the schooner C. W. Spry, which assisted General West in getting his goods from on board the Lovy Harrison after she was sunk. She was lying in the bay, on Jones's Point, in twenty feet water, about three miles from Sharp's Island. Deponent thinks he saw enough of the schooner Lovy Harrison to see how she was injured. Deponent raised her to get the goods out of her; she was on her beam ends. Witness uprighted her and brought her decks above water, so as to get the goods out of her. She was injured in her bow—that is, the forward part of the vessel; she was cut right through by the foremast; the direction of the blow was nearly athwart ships—that is to say, at right angles. Judging from the character of the injury of the course of the steamer was north at the time of the collision. The schooner must have been going nearly east or west. If the schooner was struck on the starboard side, and the steamer going north, the schooner must have been going to the eastward. From the appearance of this vessel when he raised her, he could not tell on which

side she was struck, for she was cut clear through. Deponent has been following the water, off and on, for some twenty-five years. When a steamer is steering for me, I presume I should not be able to tell at the first moment which way she was steering, but he could soon be convinced in which way she was steering; thinks he could tell, with accuracy, the course she was steering, if the night was light so that he could see the hull; does not think you could tell the course with accuracy, till the hull was seen. Deponent could tell which was the starboard and larboard side of a steamer by seeing her lights alone. Does not know on which side they carry red light, or on which side they carry the green light. Deponent was under the impression that the red light on board steamboats was carried aft. Deponent generally judges of the course the steamer is steering by the tall light which is generally carried in the stem.

Cross-examined.

Deponent thinks the best position to hang a light on board of a sail-vessel at night is under the bowsprit, or on the fore-rigging. The proper course of the steamer at that part of the bay where the collision took place, on her way to Baltimore, should have been north. All the cargo and property on board the Lovy Harrison after she was sunk, that could be saved, was saved. The schooner could not have been raised and brought to the city without great difficulty, and deponent does not think that she was worth the expense of raising and bringing her to town.

Direct examination.

At the place where the collision took place there was abundance of sea-room for both vessels; the bay there is six or eight miles wide, and deep water on both sides.

SOLOMON S. SAUNDERS.

Deposition of Isaac T. Bayliss, witness for Appellants, taken before John Hanan, esq'r, U. S. Commissioner, at the city of Baltimore, on the 14th day of April, 1855.

That he was on board the Virginia on the night of the collision with the Lovy Harrison. He was in his berth, which was the third berth from the wheel-house, on the right-hand side of the boat; deponent was a passenger, was perfectly awake when the collision took place, and ran out on the deck at once; when he got out, he went immediately to the wheel-house where the helmsman was, and when he got there found the schooner had slewed round the larboard side of the steamer, and was going aft and sinking; heard the cries of the persons on board the schooner; the foremast of the schooner and part of her rigging had fallen across the bow of the steamer, and had broken the railing on both sides of the steamer. Deponent ran aft to assist in rescuing the persons off of the schooner; when he got aft found the

schooner going down, with one sail up just above the water and sinking, and the steamer's boat on its way to her. Deponent did not see Fields, the pilot of the Virginia; does not remember to have seen him till the next morning; might have passed him, but there was so much confusion he did not notice him. Deponent saw Captain Harrison after he came on board the Virginia and had a right smart talk with him; talked with him the next morning; asked Harrison how the accident happened; he said he hardly knew how it happened; he said he saw the steamer, and hallowed and kept away, and kept away until the steamer ran over him; those were about the words he used; he stated, also, he had lost all he had, and had a wife and nine children. Deponent had also some conversation with General West, who was on board the schooner; he said he was in his berth at the time of the collision, jumped up when she struck, ran on deck, tried to climb the mast; before he ran on deck he heard them on board the schooner hallowing. The collision was between 2 and 3 o'clock in the morning. There was a right stiff breeze blowing at the time. The steamer was run aground on Tilghman's Island bar after the collision; she remained there from about 5 o'clock in the morning till 5 or six o'clock in the afternoon, by which time they got her free of water, and started for Baltimore, where she arrived at 11 o'clock at night. She was due here at 7 o'clock in the morning of the collision. About 10 o'clock some of the passengers—between 30 and 40—were taken off by the Hugh Jenkins and carried to Cambridge, Md., and thence to Baltimore next day. The wind was very heavy, and there was apprehension expressed by the passengers lest the steamer Virginia should go to pieces, which was the occasion of their leaving her. Captain Harrison and General West remained on board the Virginia; the rest of the schooner's crew went to Cambridge in the Hugh Jenkins.

Cross-examined.

There was no bell rung on board the steamer Virginia before the collision took place; he heard none; he was awake, and should have heard it if it had rung. The engine of the steamer was not stopped before the collision. Deponent guesses he was on deck as soon as any of them after the collision. When deponent got on deck he saw a black man at the wheel; saw no one on deck, to the best of his recollection, but that man. The steamer struck the schooner on the schooner's starboard bow about the fore-chains, and slewed the schooner round upon the steamer's larboard side. When deponent saw the schooner she had no lights; he looked at her—looked at her all over—and saw no lights; supposes he could have seen the light if there was any light in her.

Direct examination.

Deponent has been in the habit of trading up and down the bay; for the last year he trades horses, cattle, sheep, and anything else he can

get hold of, and generally goes passenger in this steamer. [Had sooner travel on her for safety than any steamer he ever travelled on.]

The part above in brackets is objected to by the counsel for the appellees.

Deponent is familiar with the steamer and all her arrangements; the wheel-house is on the upper deck, square with the extreme edge of the deck, forward. Deponent thinks the best place on board the steamer for a lookout is by the wheel-house, or in the wheel-house—is enclosed with window-sashes which raise up and can be lowered.

ISAAC T. BAYLIS.

Deposition of James L. Slacum, witness for the Appellants, taken before Wm. S. Brown, clerk of King George's county court, on the 18th day of April, 1855, under a commission issued by consent.

STEAMER VIRGINIA and owners atst. WEST.

SAME atst. HARRISON.

Circuit Court of the U. S. on appeal from the District Court of Md. district.

Interrogatories, on the part of the Appellants, to be propounded to James L. Slacum, of King George's Court-house, Virginia.

1st interrogatory. Were you or not on board of the steamer Virginia, on her trip to Baltimore, on or about the 16th or 17th day of October, 1854, when she came in collision with the schooner Lovy Harrison? If you were, please state in what part of said steamer you were when said collision took place; how long before said collision you had last been on deck; how soon thereafter you were on deck; whether, at any or either of said times, you saw any, and what person, on the look-out, and in what part of the said steamer; whether, when you were last on deck prior to the collision, you yourself did or did not observe the course of the said steamer; whether you did or did not then perceive any vessels, or lights or light.

Answer. I was on board the steamer Virginia on or about the 16th or 17th day of October, 1854, when she came in collision with the schooner Lovy Harrison. At the time of the said collision I was lying, awake, in a berth in the upper sleeping apartment of the said steamer; I had just turned in, having been on deck not more than some four or five minutes prior to the happening of the collision; I sprung out of my berth immediately thereafter, and hastened along the deck of the steamer; met John Fields, the 2d mate, at the wheel-house, and saw the wheelsman, a colored man, at the wheel; when last on deck, prior to the collision, saw no persons but John Fields and the wheelsman

above named, the former standing at the wheel-house and the latter at the wheel; when last on deck, prior to said collision, I observed that the said steamer was steering, as near as I could judge, a north course; the only lights I then observed were the lights of some vessels to the eastward, and Sharp's Island light.

2d interrogatory. After the said collision, did you or did you not have any conversation with, or hear any statements made by, the master or mate of the said schooner, in regard to the course of the said schooner from the time the steamer hove in sight down to the time of said collision? did you or not hear either or both the said parties say whether the course of said schooner was or was not changed; whether she kept on her course, or luffed, or kept away? If you heard anything in regard to any of the said matters, stated by either of the said parties, please to state the same, as nearly as you can remember, in words and substance, as by them so stated; and how, when, where, and in whose presence the said statements, if made, were made.

Answer. After the said collision, and the crew of the schooner (which consisted only of two men,—master and mate,—as far as I saw) had been brought aboard the said steamer, I questioned the master as to where he was bound; he replied he was bound down the bay; I asked him, did he not have a fair wind? he answered he had; I then asked him why, then, was he steering across the bay? he replied that he had put his helm hard up to prevent the steamer from running into him. This conversation, between the master of the schooner and myself, occurred in the presence of Captain Fairbanks and various other persons, whose names I do not now remember; and subsequently I heard the said mate make a statement, substantially the same as that detailed in the conversation between him and myself, in the presence of Captain Fairbanks and others, on board the Hugh Jenkins.

3d interrogatory. In what capacity were you, if at all, on board the said steamer?

Answer. I was on board the Virginia as a passenger from King George's to Baltimore.

4th interrogatory. Have you any nautical knowledge or experience? if yea, please state the extent thereof.

Answer. I have had some nautical experience; I navigated the Chesapeake bay, as captain of the schooner Elexzena, for about five years—from 1843 to 1848.

5th interrogatory. If you know any matter or thing not inquired of, beneficial to the owners of said steamer in this controversy, please state the same as fully as if thereunto specially interrogated.

Answer. At the time of the said collision there was a fine westerly breeze. JAS. L. SLACUM.

Cross-interrogatories.

1st cross-interrogatory. If you answer to the first interrogatory on the part of appellants, you shall state that you were on board the

steamer Virginia, upon the occasion mentioned in said interrogatory, and that you were on the deck of said steamer before or after said collision, please state in what capacity you were on board said steamer; and if, in answer to said interrogatory, you shall state that there was any look-out on board said steamer, when you were last on deck, before the said collision occurred, please state what was the name of such look-out, whether he was black or white, and in what part of the steamer he was standing, and whether you have personal knowledge of what you state in answer to said interrogatory, or whether you have heard it from others; and if from others, state from whom; and state, further, how you know what course the steamer was steering;—state particularly.

Answer. As I have previously stated, I was on board said steamer Virginia as a passenger; and also, as before stated, the only person I saw when last on deck before said collision occurred was John Fields, the second mate, a white man, standing at the wheel-house, and the wheels-man, a colored man, (whose name I do not recollect,) standing at the wheel. I saw no other persons, but heard voices on the lower deck. What I stated in my answer to the first interrogatory was of my own personal knowledge. My knowledge of the course the steamer was steering, was derived from my nautical experience and practical acquaintance with the Chesapeake bay.

2 cross-interrogatory. Do you know, of your own knowledge, how long the schooner was seen by any one on board the said steamer before said collision? or how far apart said two vessels were when said schooner was first seen by any one on board said steamer? If so, state particularly said time or distance.

Answer. I do not know how long the schooner was seen by any one on board the steamer before the collision occurred. When first seen by me, which was within a few seconds after the said collision, the schooner was lying obliquely across the bow of the steamer.

3d cross-interrogatory. State any matter or thing you may know material to the libellants.

Answer. I know of no other matter or thing material to the libellants.

4th cross-interrogatory. Was it a moonlight night when the said collision occurred, or a dark night? state particularly.

Answer. It was not a moonlight night; it was a starlight night, with rather a hazy sky, as well as I recollect.

And further this deponent answers not.

JAS. L. SLACUM.

Deposition of James R. Baylis, witness for the Appellants, taken before John Hanan, esq., U. S. Commissioner, at the city of Baltimore, on the 24th day of April, 1855.

Deponent was on board the Virginia on the night of the collision with the Lovy Harrison; it was the 16th of October, 1854. Deponent went to bed soon after supper, and got up about half-past 12, and

went to bed again about twenty minutes past 2 o'clock; knows it was about that time from the fact of his looking at his watch, which he took out of his vest pocket. Deponent had not got to sleep when the collision took place. Deponent jumped up as soon as the collision took place, and ran out on the larboard side of the upper deck, just abaft the paddle-box; when he reached there, saw the schooner just abreast of us, and the men hallowing for help; the schooner was drifting down with the wind; she appeared to be in a sinking condition; deponent ran forward to where Fields, the pilot, was, and asked him for God's sake to get out a boat and save the men, they were perishing; he said he was getting the boat out, and was doing it as fast as he could. Deponent took particular notice of the weather: it was a hazy starlight night, the moon was up, and was just above the tree-tops after they struck. The wind was from the westward, and blowing what deponent would call a fresh whole-sail breeze. Saw Captain Harrison after he came on board the Virginia, and talked with him about the accident. The first thing he heard captain say was exactly in these words; putting up his hands, say, "O, Lord! I could not help it; I kept away, and kept away, and kept away all I could; and the wind was so light, I could not keep away no harder, and then the steamboat ran over me." In a private conversation with Captain Harrison afterwards, he reiterated the same thing to deponent. There was a hole knocked in the larboard bow of the steamer, thinks about twelve feet from the stem under water. Deponent remained on board the steamer till she came up to Baltimore; she leaked very badly; was compelled to run her ashore on Tilghman's Island; saw no light on the schooner at any time. Deponent was a passenger on board the steamer Virginia; is in the constant habit of going up and down the bay on *a* average twice month.

From Baltimore to Tilghman's Island deponent is perfectly acquainted with the bay. There was plenty of steerage room on both sides of the bay where the collision took place. On board the Virginia the best place for a look-out is forward, alongside the wheel-house on the upper deck; considers it the best place, because it is more elevated, and you have the best view there all round. There are two pilots on board the Virginia, besides the captain, who has a pilot's license. The two pilots of the steamer are named Fields and Reese. Thirty minutes before the accident happened, just before deponent retired, he conversed with Fields, who was standing in the wheel-house—on the starboard side of the wheel-house, looking out of the window, having hold of the wheel; there was a negro man with him, who also had hold of the wheel on the larboard side. The wheel-house has open sashes on three sides.

Cross-examined.

When deponent first got on deck, after the collision, the first man he saw on deck was Mr. Fields; he was standing on the larboard side of the wheel or steerage-house, leaning over the rail of the steamer,

directing the men about getting the boat out. The steamer was to the eastward at the time of the collision; it could not be any other ways; knows it was to the eastward from the course they have to steer, his knowledge of the bay, and the position they had to each other at the time of the collision, which position they kept afterwards—the slewing round on the larboard side of the steamer; the schooner passing to the west, the steamer to the east, the schooner drifting south; deponent has satisfied himself since the time of the last trial of this case, by actual observation on a similar night, that a vessel of the size of the schooner Lovy Harrison, with her sails up, but no lights, could not have been seen more than 300 yards off. This opinion of his is based on an observation that he made since the last trial from the deck of the steamer Virginia, in estimating the distance between the steamer and another vessel, by estimating the known speed of the steamer, and the supposed speed of the sailing vessel, according to the strength of the wind and the time it took the two vessels to come together. The schooner was struck just about her fire-chains, and appeared to be cut down to the keel.

JAMES R. BAYLIS.

Deposition of Thomas Davis, witness for the Appellants, taken before John Hanan, esq., United States commissioner, at the city of Baltimore, on the 11th day of May, 1855.

Deponent was on board the Steamer Virginia on the night of the collision with the Lovy Harrison; he was a passenger, lying in his berth, wide awake talking to some of the passengers lying in the neighboring berths; felt a jar; jumped up and dressed himself as soon as he could; witness having lost a hand could not dress as quick as the others, so that when he got out on deck, he believes all the passengers were already out. When witness got on deck he saw the boat with Gen'l West, Captain Harrison, and his two hands rowing alongside the steamboat Virginia, and in the act of getting on board; they were in the steamer's boat. The schooner was close by, and appeared to have sunk level with the water. Witness noticed that one of her masts was out. Witness stayed on board the steamer until she arrived in Baltimore, as also did Gen'l West and Capt'n Harrison; the two hands of the schooner went on board the Hugh Jenkins; one of them was a small black boy apparently 12 or 13 years old; the other, the white hand, appeared by his looks between 17 and 18 years of age. After Capt'n Harrison got in the dining-room, he said, in the presence of witness, that he saw the steamer, he judged about half a mile off, that came up very fast upon him; that he gave up his helm to one of his hands and he himself went forward, and stayed forward, and kept away, and kept away, and kept away until they finally came together. He said he gave orders to the helmsman to keep away, and he kept away, and kept away until they came together. Witness was with Capt'n Harrison very frequently during the passage up, and he repeated this same statement several times; witness asked him how old his vessel was, and he said

he judged from 18 to 20 years old; said she had been re-built, and was about forty tons burthen. Told deponent he had made some payments on her, but only had paid part; had some good backers and paid along as he could make the money. Deponent has been in the habit of navigating a vessel in the Chesapeake Bay for nine or ten years; considers himself a tolerable good navigator. The wind that night was from W. to N.W., blowing a tolerable good breeze, enough to make a vessel work well.

Question. From your experience as a seaman, your observation of the wind and weather on the night in question, and the statement made by Capt'n Harrison, as to the course he steered after seeing the steamer; what, in your opinion, was the cause of the collision?

(This question objected to by the counsel for the appellees.)

Answer. Witness thinks it was caused by Capt'n Harrison's not keeping his right course; if he had kept his right course he would not have run into the steamer; it is witness's opinion that the schooner ran into the steamer, not the steamer into the schooner. Witness thinks Capt. Harrison was very much frightened, which was the cause of it.

Cross-examined.

Captain Harrison stated to the witness that the wind did not blow hard enough for him to get out of the steamer's way. Capt'n Harrison said that he went forward to hallo to the steamer to keep away; he said that he hallowed, but they came together so quick he could not get out of the way. He, Harrison, said he had a light forward, but whether he had or not deponent does not know, as the foremast of the schooner was out with the forward rigging when deponent saw the schooner.

Direct examination resumed.

Deponent thinks there was plenty of wind for the schooner to have got out of the steamer's way; it was blowing a right stiff breeze, a right good sea agoing. Capt'n Harrison seemed to think, in his conversation with deponent, that by keeping away he was getting out of the steamer's way; whereas in order to have got out of her way, as deponent thinks, he ought to have luffed. Deponent has no doubt that Capt'n Harrison did what he thought right, but deponent believes Capt'n Harrison was so much scared he did not know what was right. [It is deponent's practice, when meeting a steamer, to keep his course; if you go cutting and shearing about with a sailing craft, when a steamer's about, you are almost certain to come together.]

Cross-examination resumed.

Deponent has not followed the water for the last eighteen or twenty years; down to that time he had been a sailor almost all his life; he is between 52 and 53 years old.

his
THOMAS ⋈ DAVIS.
mark.

The testimony included within brackets objected to by the counsel for the appellees.

J. HANAN, *Com'r.*

Admission and Agreement.

HARRISON
ats.
STEAMER VIRGINIA, &c.

WEST
ats.
SAME.

In the District Court of the U. S. for the district of Maryland.

It is admitted, in the above two cases, that Isaac T. Baylis, a witness examined on behalf of the respondent upon the trial of the above cases, stated upon his cross-examination, amongst other things, that when he first got on deck of the steamer after the collision, he asked the negro man at the wheel of the steamer "why he did not stop the steamer before the collision, and that said negro man replied that he did not know what to do."

It is agreed, that the above statement of said witness, Baylis, shall be used upon the trial of the above two cases, in the same manner and to the same effect as if said statement or conversation between said Baylis and said negro had been testified to by said Baylis, upon his examination before the commissioner who took the deposition of the said Baylis, to be used upon the trial of the above two cases in the circuit court, the proctors for the respondent reserving the right to, and hereby excepting to the competency of the declarations of said negro as legal evidence in said two cases, or either of them, to the same effect as if such exception had been taken before said commissioner upon said cross-examination.

ST. G. W. TEACKLE,
For Appellees.
S. T. WALLIS,
Proctor for Appellants.

Deposition of Richard A. Christian, a witness for the Appellees, taken by John Hanan, esq'r, U. S. Commissioner, at the city of Baltimore, on the 25th day of April, 1855.

That he was a passenger on board the steamer Virginia at the time of the collision with the schooner Lovy Harrison; was in his berth dozing, and thinks he was awakened by the very rapid repetition, "Starboard," "starboard," "starboard," in a very loud voice indicating great distress, and as it were, cried out in a scream. In an instant afterwards the crash and collision took place. Deponent's berth was in the larboard side of the steamer, with a window looking out. Witness was in a small state-room; when he got up and looked out of the window he saw the schooner just opposite his state-room on the larboard side of the steamer, some twenty or thirty steps from the window. Witness's berth was towards the stem of the , and the schooner was drifting astern, apparently in a sinking condition; a

boat was being lowered at the time from the steamer near this deponent's berth. Deponent does not know from whom the cry of starboard, starboard, as before detailed, proceeded.

Cross-examination.

The moon was shining at the time of the collision; she was in her last quarter, and it was as light a night as the moon could give in her last quarter; thinks the vessel, with all sails set and no lights, might have been seen about two hundred yards off, with her sails drawn as they would have been on such a night as that, with the wind at the west; with the sails boomed out, might be seen at the distance of four hundred yards. The wind was moderate, pretty fresh, pretty good wind for a sailing-vessel, not rough for a steamer.

R. A. CHRISTIAN.

Petition for leave to amend the Libel.

To the honorable Roger B. Taney, judge of the circuit court of the United States for the fourth circuit in and for the Maryland district.—In admiralty.

The petition of Mitchell W. West, William T. Bell, Albert R. Heath, James J. Edwards, Thomas C. Bunting, Lecato, and John M. Henderson, respectfully shows: That it is important to a true statement of their ground of claim against the steamer Virginia, by them libelled in the district court of the United States for the Maryland district, and which said libel is now before this honorable court on appeal, that they should make the following amendment of their libel; that is to say:

Article 3. They desire to amend, so as to read as follows:

"That at that time and from that position a steamer (in being seen, discovered at once to be a steamer) was descried from the schooner on the schooner's starboard bow, and approaching the schooner upon a course the opposite to that steering by the schooner, and that said steamer was seen as aforesaid at a distance of more than a mile from said schooner, and was then, and up to the time of the collision hereinafter mentioned, moving at a very rapid rate."

Article 4th. They desire to amend, so as to read as follows:

"That upon seeing, as the vessels approached each other, that said steamer would run into the schooner, the captain of said schooner with loud cries called to said steamer, and desired her to keep clear of said schooner, and not run into her."

Article 5. They desire to amend, so as to read as follows:

"That the said schooner kept her course, and the said steamer also held her course, without checking her speed or taking any proper precaution to avoid a collision with the said schooner, which said steamer

might easily have done; and that said steamer had no sufficient and proper lookout stationed at the proper place on said steamer at the time of the collision hereinafter set forth and charged, and had not had such lookout for some minutes before said collision; that if said steamer had had such lookout, said schooner could have been seen at a long distance, and the collision have been avoided by said steamer, and that said collision was the result of gross negligence and want of care on the part of said steamer, and not of any neglect or want of care on the part of said schooner; that at the time and for several minutes before said collision, the only person in charge of said steamer, or upon her upper deck, from which approaching vessels could be discovered, was a colored man at the wheel of said steamer, and without any person to aid him in seeing approaching vessels, or in preventing collisions with them, by ringing the bell to stop the engine or otherwise."

ST. G. W. TEACKLE,
Proctor for Libellants.

Let the amendment be made as prayed.

Decree.

MITCHELL W. WEST, and others,
vs.
THE STEAMER VIRGINIA.

In the Circuit Court of the United States for the fourth circuit in and for the Maryland district.

This cause standing ready for hearing, and having been argued by the proctors for the respective parties, and all the allegations and proofs having been read and duly considered by the court; it is, thereupon, this 17th day of November, A. D. 1855, adjudged, ordered, and decreed by this court, that the decree of the district court aforesaid in this cause be, and the same is hereby, affirmed; each party to pay his own costs in this court.

R. B. TANEY.

From which said decree so as aforesaid passed, the said owners and claimants of the said Steamer Virginia, by their proctor, in open court here, prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, and to them it is granted.

Thereupon it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court, and the same are hereby transmitted accordingly.

Appeal Bond.

Know all men by these presents, that we, John R. Gwynn, Richard J. Capron, Thomas A. Ball, are held and firmly bound unto Mitchell W. West, Albert R. Heath, James J. Edwards, William T. Bell, Thomas C. Bunting, Lecato, and John M. Henderson, of Ac-

comac county, in the State of Virginia, in the just and full sum of six thousand dollars lawful money of the United States, to be paid to the said Mitchell W. West, Albert R. Heath, James J. Edwards, William T. Bell, Thomas C. Bunting, Lecato, and John M. Henderson, their heirs, executors, administrators, or assigns, to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this day of January, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas at a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in March, in the year of our Lord one thousand eight hundred and fifty-five, the said district court made and passed the following decree, to wit:

It is thereupon, this twenty-seventh day of March, A. D. 1855, by this court ordered, adjudged and decreed, that the libellants recover of the said Steamer Virginia, for the damages received by the collision in the proceeding complained of, as follows:

That the libellant, Mitchell W. West, recover the sum of three thousand one hundred and seventy-six dollars and thirty-one cents ($3,176 31.)

That the libellants, Albert R. Heath and James J. Edwards, recover the sum of thirty-five dollars and eighty cents ($35 80.)

That the libellant, William T. Bell, recover the sum of sixty-eight dollars and ninety-seven cents ($68 97.)

That the libellants, Thomas C. Bunting and Lecato, recover the sum of seventy dollars and sixty-nine cents ($70 69.)

That the libellant, John M. Henderson, recover the sum of twenty-five dollars ($25.)

And it is further ordered, adjudged and decreed, that unless the owners of the said Steamer Virginia, or the stipulators, John R. Gwynn, Richard J. Capron, and John J. Hudson, shall, within twenty days from the date hereof, pay unto the said libellants, respectively, the sums of money so as aforesaid adjudged to be paid to them, and all costs of this proceeding; the said Steamer Virginia, with her boats, apparel, tackle, and furniture, shall be sold by the marshal for the satisfaction of the sums of money so as aforesaid adjudged to be paid, and costs. From which said decree, so as aforesaid passed, the owners and claimants of the said Steamer Virginia prayed an appeal to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in April then next.

And whereas, also, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-five, by the decree of the same court, it was adjudged, ordered and decreed, that the decree of the district court passed in this cause be, and the same is hereby, affirmed;

each party to pay his own costs in this court. From which said decree, so as aforesaid passed, the owners and claimants of the said Steamer Virginia prayed an appeal to the Supreme Court of the United , to be held at the city of Washington, on the first Monday in December then next:

Now, the *the* condition of the above obligation is such, that if the said owners and claimants of the said Steamer Virginia shall well and truly prosecute with effect their said appeal, and pay unto the said Mitchell W. West, Albert R. Heath, James J. Edwards, William T. Bell, Thomas C. Bunting, Lecato, and John M. Henderson, their heirs, executors, administrators, or assigns, the amount of the said decree, costs, and charges aforesaid, decreed unto them by the said district court, and also all such damages, costs and charges which may be awarded unto them by the said Supreme Court, in case the said appellants shall fail to make good their said appeal, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue in law.

JNO. R. GWYNN, [SEAL.]
R. J. CAPRON, [SEAL.]
THOMAS A. BALL, [SEAL.]

Signed, sealed, and delivered in presence of

THO. SPICER.

Bond approved 8 January, 1856.

WILLIAM F. GILES.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I here-
[SEAL.] unto subscribe my name and affix the seal of the said circuit court, this first day of February, in the year of our Lord one thousand eight hundred and fifty-six.

THO. SPICER,
C'lk Circ. C't.

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